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Supreme Court, U.S.
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(3)

No. 95-1670

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JESS MCDONALD,

Petitioner,

v.

MARCEL YOUAKIM, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Respondents ask leave to file the attached Brief In Opposition To The Petition For Certiorari, without prepayment of costs and to proceed *in forma pauperis*. In support of this motion, they state:

1. Respondents include approximately 26,000 Illinois foster children who, when this case was reopened in March, 1995, were all receiving publicly funded foster care benefits from the Illinois Department of Children and Family Services. Respondents also include these children's relative foster parents (foster parents who are related to the children by blood or marriage). Respondents are part of a certified class of Illinois foster children and foster parents. See Appendix To Petition For Writ Of Certiorari ("App.") at 92a-93a. Most if not all of the respondent foster children are indigent. See 42 U.S.C. §672(a)(4) (to be eligible for federal

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foster care benefits, a child must have been living in a home eligible for Aid to Families with Dependent Children benefits). Most of the respondent foster parents are also poor. See App. at 84a n. 19.

2. Respondents sought leave to proceed in petitioner's appeal of the district court's judgment herein to the United States Court of Appeals For The Seventh Circuit *in forma pauperis*. On August 9, 1995, the district court granted this motion.

3. In support of this motion, respondents attach the declarations of Theola Crawford and Willie May Carter, who as relative foster parents in Illinois and members of the certified plaintiff class, are parties to this proceeding.

Respectfully submitted,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

DECLARATION IN SUPPORT OF MOTION TO PROCEED *IN FORMA PAUPERIS*

I. I, Theola Crawford, declare that, as an Illinois relative foster parent and a member of the certified plaintiff class in this case, I am a respondent in the above entitled case; and that in support of my motion to proceed herein without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; and that I believe I am entitled to present a response to the Petition for Writ of Certiorari.

I further declare that the responses which I have made to the questions and instructions below are true.

1. Are you presently employed? No.

a. If the answer is yes, state the amount of your salary or wages per month and

give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received: I last worked in 1980 as a cashier for a currency exchange at the Greyhound bus station in Chicago, Illinois. For this work I was paid about $1,200 per month before taxes.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment,or in the form of rent payments, interest, dividends, or other source? No.

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months:

3. Do you own any cash or checking or savings account? No.

a. If the answer is yes, state the total value of the items owned:

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

a. If the answer is yes, describe the property and state its approximate value:

5. List the persons who are dependent upon you for support and state your relationship to those persons: I am caring for five relative children, their names and ages are:

Kimberly Crawford (grand child) (19), Olex Outlaw (nephew) (9), Terrel Outlaw (nephew) (7), Diontay Outlaw (nephew) (4), and Dwan Outlaw (nephew) (3).

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 20, 1996.

Theola Crawford

No. 95-1670

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

JESS MCDONALD,

Petitioner,

v.

MARCEL YOUAKIM, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

DECLARATION IN SUPPORT OF MOTION TO PROCEED *IN FORMA PAUPERIS*

I. I, Willie May Carter, declare that, as an Illinois relative foster parent and a member of the certified plaintiff class in this case, I am a respondent in the above entitled case; and that in support of my motion to proceed herein without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; and that I believe I am entitled to present a response to the Petition for Writ of Certiorari.

I further declare that the responses which I have made to the questions and instructions below are true.

1. Are you presently employed? No.

a. If the answer is yes, state the amount of your salary or wages per month and

give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received: I last worked in 1986 as a launderer at the Holiday Laundry, located at 8138 N. Florence in Skokie, Illinois. For this work I was paid $3.75 per hour, plus piece work. My gross monthly income was about $600 before taxes.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment,or in the form of rent payments, interest, dividends, or other source? No.

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months:

3. Do you own any cash or checking or savings account? No.

a. If the answer is yes, state the total value of the items owned:

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No.

a. If the answer is yes, describe the property and state its approximate value:

5. List the persons who are dependent upon you for support and state your relationship to those persons: I am caring for eight grand children, their names and ages are:

Erica Carter (13), Temeka Carter (12), Tiffany Carter (10), Derrick Carter (8), Norma Jean Jones (7), Teresa Jones (6), Takiah Jones (4) and Eric Jones (3).

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 20, 1996.

Willie May Carter

No. 95-1670

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May 24, 1996

QUESTION PRESENTED

Until July 1, 1995, approximately 26,000 abused and neglected children whom Illinois placed with caretakers related to the children received cash foster care benefits under the state's foster care program, even though their relative foster homes were "unlicensed". On June 6, 1995, the Governor signed into law a new state statute that established the eligibility requirement that all foster homes must be "licensed". To effect the transition from benefit eligibility for children in "unlicensed" homes to eligibility only for children in "licensed" homes, the new statute also directed state officials to terminate the foster care benefits of all relative foster children living in homes that had not become licensed as of short deadline dates. The deadlines were July 1 and September 30, 1995, depending on the category of unlicensed foster home in which the child lived. The district court found, as a matter of fact, that the state's transition procedures made it impossible for Illinois to decide by the benefit termination deadlines these children's claims that their homes in fact met the licensure standards and should be licensed. The question for decision is:

Whether a state, consistent with the Due Process Clause of the Fourteenth Amendment, may terminate the cash benefits it pays to children under an ongoing social welfare program on the ground that the children had not met a new substantive eligibility requirement by a set transition deadline, when the state has neither considered nor decided on their merits the claims of the children that they in fact meet the new requirement.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

Respondents respectfully request that this Court deny the Petition for a Writ of Certiorari ("Pet.") seeking review of the Seventh Circuit's opinion in the case (App. 1a-44a).

CONSTITUTUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution is set out in the petition. Pet. at 3-4. This case also involves the following statutes:

Title IV-E of the Social Security Act, 42 U.S.C. §§671 et seq. (1994),

42 U.S.C. §672 (Supp. App. 1a-3a)[1];

---

1 Respondents cite to their Supplemental Appendix ("Supp. App."), which is bound with this Brief

20 ILCS 505/5(u-5), as amended by P.A. 89-21, Art. 5, §5-15 (Supp. App. 4a);

20 ILCS 505/7(b), as amended by P.A. 89-21, Art. 5, §5-15 (Supp. App. 5a-6a).

STATEMENT OF THE CASE

A. The Illinois Foster Care Program

1. The children in the plaintiff class are over 26,000 of the 47,007 abused and neglected children in Illinois whose care is the legal responsibility of the Illinois Department of Children and Family Services ("DCFS"). App. 54a, 92a-93a (defining class). DCFS assumes responsibility for the care of abused and neglected children pursuant to orders of Illinois juvenile courts appointing the agency the children's custodian. App. 52a.

2. DCFS places the children committed to its care in various placements, including group homes, institutions, and foster family homes. App. 52a. The plaintiff children are all in DCFS custody, and DCFS has placed them in family homes with foster parents who are related to the children. App. 48a, 52a. The plaintiff children are thus "relative foster children" living with "relative foster parents."

3. At all relevant times, DCFS has placed foster children in non-relative homes only if those homes have first secured a foster home license. App. 52a. In contrast, DCFS has placed foster children in relative homes following only a safety check of the home, which grants the home "pre-approval". App. 6a, 52a.

4. Until July 1, 1995, a foster child's assigned caseworker, after placing a foster child with a relative foster parent and "preapproving" the relative home, could initiate a formal "approval" process for the home, pursuant to the special relative home approval rule that DCFS adopted in 1986. App. 52a-54a. The approval process was very similar to the licensure process: both processes required a formal application and that household members submit to

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In Opposition. The Supplemental Appendix sets forth the statutes involved in this case. It also includes other material that respondents believe essential to understand the Brief In Opposition. See S. Ct. Rule 14.1(i)(vi).

fingerprinting, to a criminal background check, and to an inspection of the home before DCFS would determine whether the home met the applicable state standards. App. 54a, 58a, 61a. Moreover, the substantive approval standards were "substantially the same with regard to the safety, health and welfare of children" as the substantive licensing standards. App. 54a n.9.

5. Both the licensing and approval processes were beset with "administrative difficulties" attributable to DCFS. App. 58a. As a result, long time delays attended the processing of license and approval applications. App. 64a-65a. DCFS policy was that a "decision to issue a license should be made within seventy-five days of the time the application is filed... ." App. 64a. "However, DCFS statistics indicate[d] that only 19.3% of all licensing applications in Cook County in fiscal 1994 were licensed within seventy-five days." App. 64a-65a. On average, it took approximately six months from the time an application was filed for DCFS to complete the formal licensure process. App. 64a (citing testimony of children's expert witness).

6. Prior to July 1, 1995, DCFS paid full foster care benefits of approximately $350 per month per child to a relative foster parent on the foster child's behalf regardless of whether the relative foster home was "preapproved" or "approved" or "licensed". App. 52a-53a. Therefore, relative foster parents had no financial incentive to become approved or licensed, and the distinction between being "preapproved", as opposed to "approved or licensed", "understandably escaped" them. App. 53a; App. 52a-53a.

7. The distinction between a relative home that had been "preapproved" and one that had been "approved or licensed" had substantial significance for Illinois' financing of its foster care program, though not for individual foster children. Id.; App. 9a. Specifically, under Title IV-E of the Social Security Act, 42 U.S.C. §§671 et seq. ("Title IV-E"), Illinois was eligible to receive federal reimbursement for the foster care benefits it paid only if, inter alia, the child lived in a "licensed" family home or a home "approved...as meeting ...[licensing] standards." 42 U.S.C. §672(a)(3) & (c). See 42 U.S.C. §674 (federal reimbursement statute).

8. The approval process was somewhat "less intrusive and had fewer requirements than licensing." App. 63a. Therefore, "to the extent DCFS encouraged relative caregivers to

apply to be approved or licensed, DCFS usually encouraged the approval process." App. 57a. Indeed, DCFS "channeled relative caregivers towards the approval category rather than licensure." App. 69a. Thus, "the licensing process was not equally available to both relative and non-relative foster homes." App. 63a (emphasis added).

9. Because DCFS channeled relative children away from licensure, as of April 30, 1995, "only 1.2% of all related children in foster care resided in licensed homes, while 42.6% of such children lived in approved homes... ." App. 64a. As of the same date, "22.2% of the pre-approved homes had applications for approval pending." Id.

B. The Home Of Relative Reform Plan ("HMR Reform") And The HMR Transition Process

10. On May 26, 1995, the Illinois legislature enacted, and on June 6, 1995, the Governor signed into law P.A. 89-21, amending 20 ILCS 505/5(u-5) and 7(b), Supp. App. 4a-6a. App. 9a-10a, 47a. The new statute , as implemented by DCFS under the so-called Home of Relative Reform Plan ("HMR Reform"), made significant substantive changes in Illinois' foster care program, effective July 1, 1995. These changes included: (a) the imposition of more stringent substantive licensing standards for foster family homes (Supp. App. 5a-6a; App. 59a); (b) the elimination of formal "approval" as a basis for foster family home certification (Supp. App. 4a; App. 58a); (c) a new requirement that, for a foster child to receive full foster care benefits, he or she must live in a "licensed" foster care home (Supp. App. 4a; App. 9a, 59a-60a); and (d) a measure allowing DCFS to maintain children in its custody in unlicensed relative homes (Supp App. 5a-6a; App. 59a), where they would be eligible only for "standard of need" payments under the Aid to Families with Dependent Children ("AFDC") program (42 U.S.C. §§601 et seq.), which, depending on family size, are 42% to 72% lower per child than full foster care benefits, App. 60a.

11. The substantive changes to the Illinois foster care program under HMR Reform did not eliminate the Illinois foster care program or change the terms of federal reimbursement for foster care payments. App. 10a, 38a, 77a-78a. Before and after the effective date of HMR

Reform, DCFS paid full foster care benefits of $350 per month to all of the children in its custody that it found eligible for them. App. 5a-12a, 52a, 60a.

(a) Before and after the effective date of HMR Reform, Illinois received federal reimbursement under Title IV-E for the benefits it paid to the children who met the Title IV-E eligibility requirements. App. 9a, 53a. See 42 U.S.C. §674. These requirements included: that the child's removal from the child's own home have occurred pursuant to a voluntary placement agreement or a judicial determination ("removal criterion") (42 U.S.C. §672(a)(1)); that the child is in DCFS custody (42 U.S.C. §672(a)(2)); that the child live in a licensed or approved home (42 U.S.C. §672(a)(3) and (c)); and that the child either received AFDC assistance or would have been eligible for AFDC ("AFDC-relatedness criterion"), 42 U.S.C. §672(a)(4). See 42 U.S.C. §672(a)(3), (c) (permitting states to choose "licensure" or "approval" or both as a basis of a child's eligibility for federally-assisted Title IV-E benefits; under HMR Reform, Illinois chose "licensure" as the only basis of eligibility for such benefits).

(b) Before HMR Reform, as long as a child was in DCFS custody and placed in a foster home (whether preapproved, approved or licensed), the child was eligible for state-funded full foster care benefits. App. 52a. HMR Reform added the requirement that a child's foster home must be licensed. P.A. 89-21, amending 20 ILCS 505/5(u-5), Supp App. 4a-5a. Illinois did not, either before or after the effective date of HMR Reform, impose a "removal criterion" or an "AFDC-relatedness criterion" as eligibility requirements for receipt of state-funded foster care benefits. First Stipulation of Uncontested Facts, No. 14 (Supp. App. 8a); 20 ILCS 505/5(u-5), as amended by P.A. 89-21, Supp. App. 4a. Thus, even after HMR Reform, Illinois continued to pay full foster care benefits of approximately $350 per month to children who lived in a "licensed home" but did not meet one or more of the other federal eligibility requirements, such as the "removal criterion". Trial Testimony of DCFS Official Mary Sue Morsch at 176-77, Supp. App. 11a-12a. See App. 10a, 12a, 59a.

12. Under HMR Reform, an unlicensed relative foster home's application for a license is treated as an application for foster care benefits federally-reimbursable under Title IV-E. This

is because, after the effective date of HMR Reform, Illinois receives federal financial reimbursement for foster care benefits only if they are paid to children in licensed homes. See ¶11(a), supra.

13. From its inception in P.A. 89-21, the HMR Reform Plan incorporated varying transition deadlines by which children's homes had to become "licensed" under the amended licensure standards in order for the children to continue to receive full benefits. App. 59a-60a, 62a. Specifically, the HMR Reform Plan allowed homes that were already licensed (almost exclusively non-relative homes, see ¶¶3, 9, supra) to demonstrate that they met the new standards at whatever time--up to two years after the July 1, 1995, effective date of HMR Reform--their licenses next came up for review. App. 12a & n.8, 59a-60a. On the other hand, the HMR Reform Plan required homes that had been approved or preapproved (exclusively relative homes, see ¶¶3, 4, supra) to secure a license under the amended standards by set deadlines. App. 59a-60a, 62a. DCFS would terminate the foster care benefits of all the relative children in homes that did not secure a license by the applicable deadlines. Id. For plaintiff children living in preapproved foster homes, the applicable deadline (benefit cut-off) date was July 1, 1995. Id. For plaintiff foster children living in approved homes, the deadline was September 30, 1995, if their homes submitted an application for licensure prior to July 1, 1995. Id.

14. The HMR Reform deadlines placed the plaintiff children "in an impossible situation." App. 70a. Due to the DCFS practice of channeling relative foster children away from licensure, virtually all such children lived in approved or preapproved homes in the weeks before the effective date of HMR Reform. See ¶9, supra. In order for these children's benefits to continue, their homes had to apply for and be determined eligible for a license by the applicable deadlines. See ¶13, supra. However, owing to the number of the resulting license applications (see ¶¶ 1, 3, 9 supra), the usual lengthy delays attending the licensure process (see ¶5, supra), and DCFS' delay in issuing notices and applications (App. 61a-62a), "there [was] simply no way that DCFS [would] be able to process all the applications for licensure in time to prevent the loss of substantial foster care benefits to these [children]" (App. 70a), even though "many" of the

children's homes in fact "satisf[ied] the requirements for licensure". App. 64a.

C. This Litigation

15. On August 24, 1976, the district court entered a final Judgment and Order in this action (the "1976 Order") (App. 90a-98a), pursuant to its Memorandum Opinion of July 27, 1996. 431 F. Supp. 40 (N.D.Ill. 1976). The court of appeals affirmed. 562 F.2d 483 (7th Cir. 1977). On plenary review, this Court unanimously affirmed the judgment of the court of appeals. Miller v. Youakim, 440 U.S. 125 (1979).

16. In May 1995, plaintiff class member children and their relative foster parents filed a motion to find the Director in civil contempt of the 1976 Order. App. 48a. Later, in light of the passage of P.A. 89-21, they filed a supplemental motion for declaratory and injunctive relief pursuant to 28 U.S.C. §§2201, 2202. Id. They did not attack the substantive changes in HMR Reform, but the procedures for transition from providing full foster care benefits to children in unlicensed relative homes to providing full foster care benefits only to children in licensed homes. App. 48a, 51a, 72a, 74a. In both motions, the children alleged that these transition procedures disfavored the relative foster children currently receiving benefits in unlicensed homes, on the basis of their status as relatives, in violation of their rights under the 1976 Order and Title IV-E, and that the procedures deprived them of a protected property interest in continued receipt of full foster care benefits, in violation of their rights under the Due Process Clause of the Fourteenth Amendment. App. 51a.

17. On June 30, 1995, the district court, following a two-day evidentiary hearing (App. 49a), issued a Memorandum Opinion and Order (the "June 30 Order"). App. 47a-89a. The court held that the HMR Reform transition process violated the rights of the plaintiff children in approved and preapproved homes alike under: ¶4 of the 1976 Order (App. 67a-72a); Title IV-E (App.72a-74a); and the Due Process Clause of the Fourteenth Amendment (App. 74a-81a). It found that the entire HMR Reform transition process (see ¶¶13, 14, supra), which put only relative foster homes in the "impossible situation" of having to secure a license under the new licensing standards by the licensing deadlines, "deliberately disfavor[ed] relative caregivers [and

children]." App. 70a. The district court enjoined the Director from terminating the plaintiff children's full foster care benefits on the deadline dates unless DCFS had first afforded them an adequate opportunity to apply for licensure, and the agency had determined their applications on the merits. App. 88a-89a.

18. The Director appealed, and on September 27, 1995, the court of appeals heard oral argument. App. 1a. The next day, the Director announced that he was extending the September 30, 1995, HMR Reform licensing (benefit cut-off) deadline for the children in approved homes to January 1, 1996. App. 3a n.1.

19. On December 6, 1995, the court of appeals ruled (App. 1a), affirming the June 30 injunction, with one modification directing the district court to strike those aspects of the injunction that mandated a specific relief procedure, in order to permit the Director initially to propose his own. App. 44a. The court held that the HMR Reform transition process violated the rights of children in approved homes under the 1976 Order and under Title IV-E. App. 22a-26a. It also held that the transition process violated the rights of children in approved and preapproved homes under the Due Process Clause. App. 30a-40a.

20. On December 21, 1995, the district court modified the June 30 injunction in obedience to the court of appeals' mandate. Supp. App. 13a.

21. On January 17, 1996, the court of appeals denied the Director's petition for rehearing with suggestion for rehearing *en banc*, no participating judge in active service on the court of appeals having requested a vote on the suggestion. App. 46a.

22. During the pendency of the appeal, two appellate panels entered three orders staying the June 30 Order in whole or in part. Order (July 12, 1995) (Supp. App. 14a); Order (October 10, 1995) (Supp. App.15a-16a); Order (December 21, 1995), Supp. App. 17a-18a. Under the protection of these stay orders, the Director terminated full foster care benefits effective July 1, 1995, for all the children living in preapproved homes. App. 26a n.12. The court of appeals vacated the last of these stay orders when it denied the Director's petition for rehearing. App. 46a.

23. On February 5, 1996, Justice O'Connor denied the Director's Emergency Application To Stay [The Court Of Appeals'] Mandate Affirming Injunction...Pending Certiorari (the "Stay Application"). See Pet. at 8, n.3.

24. On February 16, 1996, the district court entered an Interim Injunctive Order (the "Interim Order"). Supp. App. 19a-43a. Among other things, the Interim Order reinstated benefits to all the plaintiff children in preapproved homes whose benefits DCFS had terminated (and had not previously reinstated) and established a license application process for children living in such homes if the homes had not previously filed such applications. Interim Order at ¶¶3-10, Supp. App. 21a-31a.

25. In the district court, the parties have submitted competing proposed Final Judgment Orders addressing the relief issues the Interim Order left unresolved. See Order (April 29, 1996), Supp. App. 44a. The principal remaining relief issue involves the provision of "restoration payments", which are payments meant to cover the benefits the children in preapproved homes lost after entry of the June 30 Order but during the pendency of the court of appeals' stay orders. See ¶22, supra. The district court has set July 3, 1996 as the ruling date on the parties' competing proposed orders. Order (May 3, 1996), Supp. App. 44a.

REASONS WHY THE PETITION SHOULD BE DENIED

In his petition, the Director obfuscates the controversy between the parties, which involves only the legality of a short-term transition process that implements Illinois' substitution of one set of eligibility rules for foster care benefits for another -- a transition process that, moreover, will be nearly complete before this Court could decide this case on the merits. He also obfuscates the plaintiff children's claims and the rulings below: the children never challenged, and the decisions below never invalidated, any of the substantive changes in the state's foster care program that the Illinois legislature made in redefining the program's eligibility rules. Along with these obfuscations, the Director mischaracterizes the court of appeals' constitutional ruling and then attacks it as in conflict with decisions of this Court, particularly Atkins v. Parker, 472 U.S. 115 (1985). See §I, infra. This argument studiously avoids reckoning with the court of appeals'

actual constitutional ruling, which is clearly correct, and with the factual findings on which it rests, which the Director has not challenged here or below. See §§I, II, infra. Neither the factual record nor the decision below even raise the Question Presented in the petition. See §II., infra.

No less that 13 federal judges have rejected the same mischaracterizations and arguments the Director makes in the petition. See App. 29a-40a, 44a (three-judge panel decision unanimously affirming district court's constitutional ruling); App. 46a (unanimously rejecting the Director's petition for rehearing en banc, none of the 10 participating appellate judges, including two from the original panel, having requested a vote on the suggestion for rehearing en banc); Order, No. A-618 (U.S. Sup. Ct. February 5, 1996) (O'Connor, J) (denying Director's Stay Application). This suggests that the Director has a more difficult than usual task if he is to persuade this Court that the court of appeals decided an "important question of federal law in a way that conflicts with relevant decisions of this Court." S. Ct. Rule 10(c).

Aside from the Director's failure to show any conflict between the court of appeals' decision and the decisions of this Court, there are independently sufficient reasons to deny the petition. First, this short-term controversy between the parties is unlikely to be repeated in Illinois or elsewhere and likely nearly to be concluded before this Court could rule on the merits. See §III, infra. There are also meritorious non-constitutional grounds for affirming the lower court's judgment, so that this Court would be likely not to reach the Question Presented if it did grant the petition. See §IV, infra.

I. THE COURT OF APPEALS DID NOT DECIDE ANY QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH THE DECISIONS OF THIS COURT

Procedural due process analysis comprises two inquiries: whether plaintiffs have a protectable property interest, and, if so, what process is due before the state may deprive them of that interest. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982). The Director argues that the court of appeals' ruling presents a conflict with decisions of this Court as to both inquiries. This argument fails.

A. The Court Of Appeals' Ruling That The Children Had A Protectable Property Interest Is Entirely Consistent With The Decisions Of This Court

The Director contends that, as a result of Illinois having "eliminate[d]" its program providing "foster care payments to unlicensed homes", all of the plaintiff children became mere "'applicants'" for foster care benefits under "another [foster care] program for which recipients could still apply." Pet. at 16. And "'applicants'" for public assistance benefits, he points out, unlike benefit recipients, have no "'legitimate claim of entitlement'" to benefits while the application is pending. Pet. at 16 (quoting Lyng v. Payne, 476 U.S. 926, 942 (1986)). The foster children here, he concludes, therefore had no "protected [property] interest" in the benefits they were seeking. Pet. at 17.

Illinois did not eliminate a foster care benefits program; it simply amended one of the eligibility requirements for continued full foster care benefits, whether federally-assisted or only state-funded. App. 10a, 38a-39a. Whereas, prior to the effective date of HMR Reform, a relative foster child could qualify for full foster care benefits if the foster home was "approved" or "preapproved", after HMR Reform a relative foster child could only qualify for full foster care benefits if the relative foster home was "licensed". App. 5a-12a. See Statement ¶¶3, 10, supra. After HMR Reform, as before, if a child meets the eligibility requirements for full foster care benefits, including the HMR Reform amended licensure requirements, the child can qualify for such benefits, with or without federal reimbursement. See Statement ¶11, supra. Children whose homes the state determines to meet the licensure requirement, but not other federal requirements, continue to qualify for full (entirely state-funded) foster care benefits. See Statement ¶11(b), supra. The court of appeals understood this. App. 38a ("HMR Reform merely imposes an additional eligibility requirement").

Also, the factual record conclusively establishes that the children in preapproved homes were not mere applicants for benefits; they were recipients of full foster care benefits under an ongoing foster care program who challenged the termination of those benefits. App. 52a, 59a-60a. See Statement ¶¶6, 11-13, 16. The court of appeals understood this, too. App. 32a

("Plaintiffs therefore have a legitimate claim of entitlement to the foster care benefits they were receiving prior to the implementation of HMR Reform") (emphasis added).

The Director contends that the appellate court's reasoning was based on the idea that currently unlicensed homes "had a constitutionally protected interest in applying for a foster care license." Pet. at 16 (not citing to appellate court opinion)(emphasis added). This contention misidentifies the interest that the children claimed, and the court of appeals found, was constitutionally protected: the children's interest, as recipients of full foster care benefits, in their continued receipt of such benefits under the ongoing Illinois foster care program. App. 30a-32a (citing Goldberg v. Kelly, 397 U.S. 254 (1970)).

The Director also contends that the court of appeals' holding that the children had a "protected [property] interest" conflicts with this Court's decisions in Board of Regents v. Roth, 408 U.S. 564, 577 (1972) ("Property interests ...are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law"), and Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 (1985) (quoting Roth). See Pet. at 14-17. But cases like Roth teach only that, when a state creates a property interest, it also has plenary power to eliminate or define away that interest.[2] If Illinois had simply eliminated its foster care program, thereby terminating all benefits under it, and had the children then challenged that action, Roth would defeat the children's claim. Illinois did not eliminate its foster care program or define away the children's protected property interest in foster care payments. Rather, it

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2 In arguing that the court of appeals erred in finding the children to have a protectable property interest in their continued receipt of foster care benefits, the Director suggests that these benefits were, for all the children, "State-created and State-funded". Pet. at 15. See id. at 14-16. As the court of appeals recognized, however, children living in approved homes had been determined eligible for and were receiving federally-reimbursed foster care benefits under Title IV-E. App. 22a-24a. Illinois has no authority to define away those children's entitlement to these federally-created foster care benefits. Youakim, 440 U.S. at 132-43. Moreover, contrary to the Director's suggestion (Pet. at 15-16), the court of appeals' constitutional ruling was not limited to DCFS' deprivation of the children's "State-created and State-funded benefits". Pet at 15. The court held that the agency had also unconstitutionally deprived the children who lived in approved homes of their federally-created and federally-funded benefits. App. 39a-40a.

afforded continued full foster care benefits to all children receiving them if the state determined (by set deadlines) that they remained eligible for them. See p. 11 supra, Statement ¶11, supra.

The Director's contention that the children were mere "applicants" for foster care benefits under a "different program" (Pet. at 16; see Pet. at i), is merely a new rhetorical version of the contention he pressed in the court of appeals that the children had no protectable property interest "because the State of Illinois eliminated [it]". App. 31. For it is the "elimination" of the entitlement that, under the Director's analysis, turns the children from recipients into "applicants" under "another program". Pet. at 16. The court of appeals correctly rejected as "tautological" the Director's contention that the enactment of HMR Reform eliminated the children's protectable property interest. App. 31a (citing Loudermill, 470 U.S. at 541). The court explained that "[a] state...may not defend against a due process claim, as the Director does here, by arguing that the plaintiff now lacks a protectable property interest by virtue of the very state ...[procedures] the plaintiff has challenged". Id. 32a (citing Logan, 455 U.S. at 431-32).

B. The Court Of Appeals' Ruling As To The "Process Due" The Children Is Entirely Consistent With The Decisions Of This Court

The Director also claims that the court of appeals erred in holding that the enactment of P.A. 89-21 did not afford all the "process due" the children prior to the termination of their property right to continued foster care benefits. Specifically, he insists (Pet. 12-13, 17-23) that the children's challenge to the benefit cuts here is just like that of the plaintiff public assistance recipients in Atkins, where this Court held that the "'legislative determination provides all the process that is due.'" 472 U.S. at 130 (citation omitted). That contention is paired with his insistence that the children's claim is unlike the one this Court ratified in Logan. Pet. at 21-22.

In Atkins, the Court noted that the legislature has "plenary power" to make a "substantive change in the scope of the entire [benefit] program", and that the "'legislative determination provides all the process that is due'" for benefit changes that are the "direct consequence" of this plenary power. Atkins, 472 U.S. at 129-30. It applied these two principles to reject a due process challenge to a "reduction in the level of petitioners' benefits [that] was the direct

consequence" of such a "substantive change." Id. (emphasis added). The "substantive change" in question was a congressional amendment to the Food Stamp Act reducing the earned income disregard applied to calculate benefits under the Food Stamp program. Id.; 472 U.S. at 118.

Under the statute at issue in Logan, Illinois terminated pending employment discrimination claims if it did not act on them by a 120-day deadline. 455 U.S. at 427. A former employee whose claim the State dismissed when it (the State) did not meet the deadline argued that the dismissal violated his due process rights. Id. The defendant employer argued that the statutory deadline was itself a "substantive element" of the state-created entitlement subject to the legislature's plenary power. Id. at 433. This Court rejected this argument, ruling instead that the 120-day deadline, was "a procedural limitation on the claimant's ability to assert his rights." Id. The Court invalidated this "procedural limitation", holding that the Due Process Clause prohibited termination of pending discrimination claims based on the statutory deadline. It required the defendant agency instead to "consider the merits of...charge[s], based upon the substantiality of the available evidence, before deciding whether to terminate [such] claim[s]." Id. at 434. The Court observed that "'[w]hile the legislature may elect not to confer a property interest,...it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards.'" Id. at 432 (citations omitted).

Atkins and Logan establish that, in procedural due process challenges to benefit terminations in public assistance programs, there is a dispositive distinction between challenges to benefit changes that: (1) are the "direct consequence" of the legislature's "plenary power" to make "substantive change[s]" in the program (Atkins, 472 U.S. at 129-30); and (2) are not the direct consequence of any substantive change in the program, but of procedures applied to effect the substantive program change. Logan, 455 U.S. at 432-34. The former challenges are subject to the Atkins rule that the legislative determination provides all the process that is due. The latter are not, because they contest the adequacy of the procedures the state is employing to terminate a protected property interest, and not the legislature's plenary power substantively to amend or eliminate a statutory entitlement program. Id., 455 U.S. at 432-34.

The Director's analogy between this case and Atkins rests on two faulty factual premises. The first premise is that P.A. 89-21, enacting HMR Reform, "terminate[d] a statutory entitlement program." Pet. at 17. Accord, id. at 13, 15, 16, 21 ("eliminat[ion]" or "terminat[ion]" of a foster care "program"). For his analogy to Atkins to hold, the Director must show that HMR Reform under P.A. 89-21 legislatively eliminated a foster care program. Only then can he analogize the termination of the children's full foster care benefits under HMR Reform to the sort of "substantive [legislative] change in the scope of the entire program" that the Court in Atkins held did not require procedures beyond the legislative determination itself. Atkins, 472 U.S. at 129-30.

The Director's first premise is false. HMR Reform did not eliminate a foster care benefits program; it simply amended one of the eligibility requirements for continued full foster care benefits, whether federally-assisted or entirely state-funded. App. 10a, 38a-39a. See Statement ¶¶10, 11; p. 11, supra.

The Director's second factual premise is that the children's "foster care payments...were not eliminated as the result of a 'procedural limitation', [but]... as the result of the legislature's substantive decision to eliminate the program providing such payments to unlicensed caregivers." Pet at 21-22. The Director needs to prove that the reductions are a "direct consequence" of the "substantive decision" in order for his Atkins analogy to hold. Atkins, 472 U.S. at 129-30.

As noted, the Illinois legislature did not make a substantive decision to eliminate any foster care program. That fact aside, the district court found, as a matter of fact, that the benefit terminations that the children challenged were a direct result of the procedures that the children attacked, particularly the licensing deadlines. App. 60a, 62a, 64a-66a. See P.A. 89-21 (Supp. App. 4a-6a) (establishing procedural deadlines and dictating termination of children's benefits on those deadlines regardless of whether DCFS had determined children's homes' licensing applications on their merits); App. 39a (HMR transition process is "fundamentally flawed ...in that it sanctions the elimination of benefits on a specified date even where a home has submitted a timely application and the Department has yet to render a decision"); App. 81a (noting "[t]he

deadline date, on which Plaintiffs' property interest is destroyed"). Under the HMR transition process, DCFS' licensing procedures made it impossible for DCFS to "render decisions on the applications for licensure that will be pending on July 1, 1995, in time to prevent the deprivation of benefits to many applicants who satisfy the requirements for licensure." Id. at 64a. See App. 70a ("simply no way that DCFS will be able to process all the applications for licensure in time to prevent the loss of substantial foster care benefits to these homes"). Indeed, DCFS never intended even to try to process applications before the deadlines, which were set to coincide with the fiscal year, not with any processing capabilities. Pet. at 22. DCFS made no efforts to process applications of preapproved relative homes for a license by July 1, 1995. App. 40a ("no transition process was provided to these children"). All of the children in preapproved homes were cut off from foster care benefits as of that date. App. 26a n.12.

A development in this case during the pendency of the appeal demonstrates conclusively that the challenged benefit terminations were the "direct consequence" of the HMR Reform procedural licensing deadlines. On the day following the appellate argument, the Director extended the licensing (benefit cut-off) deadline for children living in approved but not yet licensed relative homes from September 30, 1995, to January 1, 1996. App. 3a n.1. Neither the "legislature's substantive decision" (Pet. at 21-22) to stop paying full foster care benefits to children in unlicensed homes, nor the substantive licensing requirements, nor any other substantive aspect of HMR Reform had changed. The Director changed only the procedural limitation the legislature had established (the September 30 cut-off deadline), and he did so without any new legislative authority. As a result of this change in the procedural deadline, the children's benefits, which DCFS would have terminated on September 30, 1995, were not terminated. Thus, the challenged terminations were ones directly resulting from the deadlines dates, and not any legislatively-mandated substantive change in the foster care program.

The children have "readily concede[d] that the Illinois General Assembly may restrict foster care benefits to children in licensed homes", i.e., to homes meeting the Illinois legislature's more stringent licensing standards. App. 34a. A cutoff of benefits following a final administrative

determination that the home did not meet these new substantive standards would be the "direct consequence" of the legislature's substantive decision to amend the standards. In contrast, benefit terminations the children would suffer before DCFS finally determined whether their homes met the new substantive licensing requirements logically could not be the "direct consequence" of the new substantive requirements, since those requirements had yet to be applied to the homes.

The facts of Atkins itself defeat the Director's reliance on that case. In Atkins, the plaintiffs who sought procedures in addition to the legislative "determination" had income at the levels the substantive statutory amendment dictated should directly result in benefit reductions, and this Court held that these additional procedures were not constitutionally required. Atkins, 472 U.S. at 129-31. But the state afforded the food stamp recipients, "before any loss of benefits occurred", an opportunity to contest in a fair hearing the state's determination that their incomes were in fact at the level at which the substantive statutory amendment dictated the threatened reduction or termination of benefits. 472 U.S. at 128. The recipients in Atkins therefore were afforded "an opportunity to present [their] case[s] and have [their] merits fairly judged", Logan, 455 U.S. at 433, when they were in a position to present facts that, if proven, would entitle them to continued receipt of their full food stamp benefits (e.g., mistaken earnings reports or benefit calculations). The state did not offer the same procedural opportunity to recipients who made no claim that the state had mistakenly determined their income or made an "inadvertent [factual] error in calculating [the] benefits" owed under the amended rule. Atkins, 472 U.S. at 128. Their attempt to oppose the benefit changes on due process grounds because they had not been provided with a "better" notice amounted to no more than a futile challenge to benefit reductions and terminations that were the "direct consequence of the [substantive] statutory amendment" Congress had enacted. Id. at 130. As to these benefit reductions and terminations, no evidence the Atkins recipients could have presented could have changed the effect of the substantive statutory amendment on their benefits. The "'legislative determination [had] provide[d] all the process that... [was] due.'" Id. (citation omitted).

The children here are in a position to present facts that, if proven, would entitle them to

continued receipt of full foster care benefits. App. 38a (the "additional eligibility requirement... necessarily requires the State to determine whether existing recipients can meet the new requirement"). Indeed, the district court found, as a matter of fact, that "it is a certainty that many approved homes meet the standards for licensure," and that a "substantial number" of preapproved homes did as well. App. 66a. The children sought, and the court of appeals approved, only an "opportunity to present [their] case[s] [for licensure] and have [their] merits fairly adjudged... based on the substantiality of the available evidence, before ...terminat[ing] [their] claim." Logan, 455 U.S. at 433; App. 39a. This was the same opportunity the state afforded the recipients in Atkins who were in a position to present facts that, if proven, would entitle them to continued full food stamp benefits. The children therefore seek no more "process" than was "due" and provided the plaintiffs in Atkins.

To be sure, many decisions of this Court uphold substantive legislative determinations in statutes against procedural due process challenges. See Atkins, 472 U.S. at 129-30; Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441 (1915). And virtually all statutes, including the one at issue in Atkins and P.A. 89-21, are, by their nature, "class-wide". The Director seizes upon the "substantive" and "class-wide" characteristics of P.A. 89-21 to argue that it passes constitutional muster and the court of appeals erred in holding otherwise. Pet. at 18-19. See id. at 26. But cases like Atkins and Bi-Metallic uphold "class-wide legislative decisions" against procedural due process challenges when the challenge is to a substantive aspect of the decision--not, as in Logan and here, when it is to the statute's constitutionally infirm "procedural limitation[s]". Logan, 455 U.S. at 433. The Director mistakenly interchanges the characteristics of cases like Atkins and Bi-Metallic (often involving "legislative decisions" that are "class-wide") for the legal analysis. Compare Atkins with Goldberg, 397 U.S at 256-259 & n.5 (invalidating "class-wide" legislative determination and implementing state agency procedures that public assistance recipients were entitled only to a post-termination fair hearing to challenge benefit terminations) and Greene v. Babbitt, 64 F.3d 1266 (9th Cir. 1995), discussed at App. 35a-38a.

While the Director's Atkins analogy falters on faulty premises and his confused reading of

the case law, the analogy the court of appeals recognized between the challenged statute in Logan and P.A. 89-21 is striking. In Logan, this Court held the Illinois statute at issue unconstitutional, since the "Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged", 455 U.S. at 433, and the statutory termination of the pending employment discrimination claims because the state did not convene a fact-finding conference within the 120-day deadline deprived employment discrimination claimants of that opportunity. Id. at 433-38. Here, the court of appeals, applying the same due process rule, found P.A. 89-21 constitutionally infirm, precisely because it terminated the benefits of the children without first giving them "the opportunity to have a license application considered and determined on its merits." App. 40a.

The Director attempts to evade Logan only by quarreling with the district court's factual findings. See Pet. at 21-22. He asserts, without citation to the record, that, in contrast to the situation in Logan, the applicable licensing deadlines here were "not... 'procedure[s]' for 'determining the preconditions to adverse official action.'" Pet. at 22 (quoting Vitek v. Jones, 445 U.S. 480, 491 (1980). However, the district court found, as a matter of fact, that, under HMR Reform, DCFS would follow the dictate of P.A. 89-21 and terminate the foster care benefits of all plaintiff children unless, by the applicable licensing deadlines, DCFS had "licensed" the homes in which they lived. App. 59a-60a, 62a. The district court identified these licensure (benefit cut-off) deadlines as chief among the procedures it found unfair. App. 81a. The court of appeals agreed. App. 39a. Logan governs this case. There is no conflict between the court of appeals' decision and any decisions of this Court.

II. NEITHER THE FACTUAL RECORD NOR THE COURT OF APPEALS' DECISION RAISES THE QUESTION PRESENTED IN THE PETITION

The Director does not assert in this Court that any of the district court's factual findings were clearly erroneous. Similarly, in the court of appeals, he did "not challenge[ ] the district court's findings... ." App. 4a.

The district court's factual findings, and the Director's failure--his inability--to challenge

them, establish that the factual record does not even raise the Question Presented in the petition. Thus, the question the Director presents for review subsumes his contention that the benefit terminations the children challenged were the "direct consequence" (Atkins, 472 U.S. at 130) of substantive changes in the foster care program enacted in the HMR Reform statute. Pet. at i ("State law ...eliminate[d] statutory social welfare benefits on a class-wide basis"). But the court found, as a matter of fact, that the benefit terminations that the children challenged were the direct result of challenged procedures, not of the substantive changes in the foster care program. App. 59a-60a, 62a, 64a-65a. Therefore, the factual record does not raise the Question Presented in the petition.

The Director's position in this Court is akin to that of a litigant appealing from a district court's judgment that a union or an employer is or is not guilty of intentional racial discrimination. See e.g., Goodman v. Lukens Steel Co., 482 U.S. 656 (1987). Unless the appellant in such a case can show that the district court's factual findings underlying this judgment are clearly erroneous, his appeal fails. See id. at 665. So here, unless the Director can persuade this Court that the children's benefit cuts were, as in Atkins, "the direct consequence of [a substantive] statutory amendment," Atkins, 472 U.S. at 130, he cannot carry his argument that the court of appeals' decision conflicts with the ruling in Atkins. But to make that showing, he would have to challenge the district court's factual findings that these cuts were attributable to the HMR Reform procedures, which he has not done here or below.

The Question Presented in the petition is:

> Whether under the Due Process Clause of the Fourteenth Amendment, a State legislature may amend State law to alter or eliminate statutory social welfare benefits on a class-wide basis without first providing current recipients with individual due process determinations on their eligibility for different benefits they have not previously received?

Pet. at i.

The Director maintains that the court of appeals considered this question and ruled against him. Pet. at 10-13, 15-17, 21-23, 25. It did not. To the extent the court of appeals did consider

whether a state legislature may "amend State law" to "eliminate statutory social welfare benefits" (Pet. at i.), it answered that question in the Director's favor. App.31a. The court of appeals also agreed that the state legislature had the power to amend state law to alter or eliminate statutory social welfare benefits on a "class-wide basis" (Pet. at i). See App. 37a.

To be sure, the court of appeals did not expressly affirm that if a state "amend[ed] State law to alter or eliminate statutory social welfare benefits on a class-wide basis," it was not constitutionally obliged to "provid[e] current recipients [of the benefits being eliminated] with individual due process determinations on their eligibility for different benefits they have not previously received." Pet. at i. But this question was not one this case has ever presented, so it is not one that the court of appeals ever addressed. The court of appeals decided the constitutional question the factual record presented, and thus its constitutional ruling raises only the question the children set forth in this brief:

> Whether a state, consistent with the Due Process Clause of the Fourteenth Amendment, may terminate the cash benefits it pays to children under an ongoing social welfare program on the ground that the children had not met a new substantive eligibility requirement by a set transition deadline, when the state has neither considered nor decided on their merits the claims of the children that they in fact meet the new requirement.

Supra at i.

The court of appeals decided this question with reference to the well-established rule that "[o]nce a property interest has been created by a state, that interest may subsequently be eliminated, but only pursuant to constitutionally adequate procedures." App. 31a (citing Loudermill, 470 U.S. at 541). The court of appeals decided only the two issues this Court's due process decisions pose: "first, whether plaintiffs were deprived of a protected property interest, and if so, what process was due them in connection with that deprivation." App. 29a (citing Logan, 455 U.S. at 428). It decided them correctly. App. 30a-32a (holding that the children had a protectable property interest in continued receipt of foster care benefits, citing Goldberg, 397 U.S. at 262, and other cases), see §I.A., supra; App. 39a-40a (holding that the failure to afford the children an "opportunity to have a license application considered and determined on its merits

before the benefits ... may be eliminated" violates the children's rights to due process, citing Logan and several decisions of courts of appeals). See §I.B., supra.

Because the court of appeals did not address any issues about the constitutional power of state legislatures to effect substantive changes in welfare programs, the Director's notion that the ruling will "render state legislatures unable to reform, amend, or even terminate their own social welfare programs" (Pet. at 25), implying that the ruling thus presents an "important" federal question under S.Ct. Rule 10(c), is unfounded.[3] Moreover, state legislatures do not require any "guidance" about their constitutional responsibilities under the Due Process Clause "in connection with welfare reform." Pet. at 26. This Court's decisions set forth the guiding principles. See Logan, 455 U.S. at 428-37 and cases there cited. The court of appeals applied these principles to affirm the June 30 Order. App. at 29a-40a. They require no further "clarification". Pet. at 26.

III. THIS SHORT-TERM CONTROVERSY IS UNLIKELY TO BE REPEATED IN ILLINOIS OR ELSEWHERE AND IS LIKELY NEARLY TO BE CONCLUDED BEFORE THIS COURT COULD RULE ON THE MERITS

The Article III "case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate." Lewis v. Continental Bank, 494 U.S. 472, 477 (1990). It follows that a possibility that a case will become moot during the pendency of proceedings in

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3 The Director's suggestion (Pet. at 25-26) that the rulings below have prevented Illinois from implementing the substantive changes the Illinois legislature enacted in P.A. 89-21 is without merit. The relief the district court ordered and the appellate court affirmed did not "interfere in any way with the State's ability to have the HMR Reform take effect on July 1, 1995, including...increased licensure requirements,...and many other changes." App. 85a. In addition to full application of HMR Reform to all new (post-July 1, 1995) cases, of the roughly 26,000 children in the plaintiff class receiving full foster care benefits in unlicensed homes during the pre-HMR Reform regime (see App. 55a), only about 5,000 are still receiving such benefits in such homes (because DCFS has not yet decided the homes' license applications). Specifically, as of March 12, 1996, 2800 license applications remained pending. Affidavit of Mary Sue Morsch, ¶2, Supp. App. 46a. In the next two months (March 12-May 11, 1996), DCFS decided at least 1000 license applications. See p. 24 n.5, infra. But between March 12 and April 8, 1996, approximately 700 license applications were filed pursuant to the Interim Order at ¶¶4, 6 (Supp. App. 22a-27a). Home of Relative Reform Weekly Update (May 3, 1996), Supp. App. 48a (727 applications filed by April 8, 1996, following distribution of applications on February 23, 1996). Therefore, only about 2500 license applications remained pending as of May 11, 1996 (2500 = 2800 - 1000 + 700). Each relative foster home cares for approximately two foster children. App. 54a-56a. Therefore, approximately 5000 children are still receiving full foster care benefits in unlicensed homes.

this Court weighs against a petition for certiorari--the greater the possibility, the greater the weight against the petition. See Taylor v. McElroy, 360 U.S. 709, 711 (1959) (case mooted while pending in this Court when Secretary of Defense granted plaintiff employee "ultimate relief which he demanded").

Even when a case or controversy between the parties will not become moot during the pendency of proceedings in this Court, if it is likely substantially to dissolve during that period, then that likelihood also weighs against granting the petition. For whatever "importance" a question presented for review might have when a petition is filed, see S. Ct. Rule 10(c), the substantial dissolution of the controversy allegedly giving rise to the question makes it much less important, certainly to the litigants themselves, by the time this Court would decide the case.

There is no continuing case or controversy here between the Director and over one-third of the children in the plaintiff class, as he has acknowledged that these children are ultimately entitled to the full relief the court of appeals approved. The Director does not seek review of the court of appeals' ruling, under the 1976 Order and Title IV-E, in favor of the children living in approved homes. Pet. at 5 n.1. This ruling requires the provision of full relief to all these children, if the homes in which they lived filed timely license applications. App. 40a-42a. See Interim Order ¶¶2, 8, Supp. App. 21a, 29a. Approximately 90% of approved homes did file timely license applications (App. 41a, n. 15), so that approximately 10,000 of the slightly more than 11,000 children living in approved homes prior to the effective date of HMR Reform (App. 55a) will be afforded full relief here (even though they may not have been afforded full relief as yet), regardless of whether or how this Court resolves the Question Presented in the petition.

The record, in any event, establishes that the Director is likely to have afforded full relief to most of the plaintiff children before the winter of 1997, which is the earliest this Court is likely to decide this case should it grant the petition.[4] Thus, under the court of appeals' ruling, full

4 Assuming that this Court grants the petition this term, it seems unlikely that it will schedule argument until at least November or December 1996. This makes doubtful any decision on the merits until the winter or spring of 1997.

relief to the plaintiff children is the provision to them of an adequate opportunity to have a license application "considered and determined on its merits before...[their] benefits...may be eliminated". App. 40a. See December 21, 1995 Order, Supp. App. 13a (incorporating this directive); Interim Order ¶¶4, 6 (establishing license application process in compliance with this directive). Cf. n.7, infra (discussing restoration payment relief). By March 29, 1996, DCFS had already afforded more than 10,000 children this opportunity, by deciding on the merits their homes' license applications. HMR Weekly Update (March 29, 1996), Supp. App. 49a. DCFS has decided over 1000 additional applications since then. See n.5, infra. Finally, approximately 1800 relative homes (caring for 3600 children) "did not respond" to the opportunity afforded them by the Interim Order at ¶¶4,6 to file license applications. HMR Weekly Update (May 3, 1996), Supp. App. 48a. The only plaintiff children currently living in relative foster homes (that they lived in prior to HMR Reform) to whom DCFS has not yet afforded this opportunity are the approximately 5000 children whose license applications still remain pending. See p. 22 n.3, supra (2500 pending license applications as of May 15, 1996). DCFS is processing license applications under HMR Reform at the rate of approximately 572 applications per month.[5] At that rate, it should take 4.4 months from May 15, 1996, or until approximately September 27, 1996, for DCFS to finally determine all the applications pending as of May 15, 1996.[6] DCFS should also provide all "restoration payment" relief (see Statement ¶25, supra) well before winter 1997.[7]

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5 Between July 1, 1995 and March 29, 1996, DCFS finally determined 5148 license applications. HMR Weekly Update (March 29, 1996), Supp. App. 49a. This is a rate of 572 determinations in each of these nine months.

6 Drawing on the figures set forth at p. 22 n.3, supra, approximately 2500 applications remained pending as of May 15, 1996. At the rate of 572 determinations per month (see n.5, supra), these applications should be disposed of in 4.4 months.

7 The district court's July 3, 1996, ruling will resolve the issue of restoration payment relief. See Statement ¶25; Supp. App. 44a. After entry of the Interim Order on February 16, 1996, DCFS reinstated benefits to the approximately 9000 children entitled to them within one week, by February 23, 1996. Supp. App. 50a; See Interim Order ¶5, Supp. App. 24a-25a. Even if making restoration payments takes many more months than the massive reinstatement did--and there is no good reason why that should be--DCFS would provide all the restoration payments before the winter of 1997.

To be sure, "administrative difficulties at DCFS" (App. 58a), and the possibility that some foster parents will appeal adverse licensing decisions, see App. 43a-44a, make it likely that some fraction of the license applications will remain unresolved by September 27, 1996, and for some months afterwards. So, while it is possible that full relief will have been provided to all the plaintiff children by the time this Court could decide this case on its merits, thus mooting the case, it is more likely that there will remain a continuing case or controversy between the Director and some (albeit relatively few) of the children until any decision on the merits here. The case or controversy that would remain as of the date of decision, however, would represent merely the residue of this litigation, making it unworthy of this Court's attention.

That so little will likely remain of this case by the winter or spring of 1997 reflects that the entire controversy between the parties involves only the legality of a short-term transition process that implements Illinois' substitution of one set of eligibility rules for another. See Statement ¶¶10, 11, supra. By definition, this particular process will never be replicated for the Illinois foster care program itself, a foster care program that has been "nearly unique" all along. Pet. at 15. Moreover, the Director cites, and the children are aware of, no examples of any other state that is implementing or plans to implement new eligibility rules for an ongoing social welfare program pursuant to the type of transition process the court of appeals held unconstitutional.

All these factors weigh against treating as "important" under S. Ct. Rule 10(c) the Question Presented in the petition. They offer substantial grounds for denying the petition, even if the court of appeals' constitutional ruling were in conflict with the decisions of this Court.

IV. THE 1976 ORDER AND TITLE IV-E PROVIDE ALTERNATIVE NON-CONSTITUTIONAL GROUNDS FOR AFFIRMANCE

There are meritorious non-constitutional grounds for affirming the court of appeals' judgment. These grounds offer still another basis for denying the petition, for they make it unlikely that this Court would reach the constitutional question the Director presents if it did grant the petition. See Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 341, 346-48 (1936) (Brandeis, J., concurring).

The district court afforded all the plaintiff children the same relief based on their claims under the 1976 Order and Title IV-E as it did on their claim under the Due Process Clause. App. 82a-84a. The court of appeals, however, affirmed the district court's non-constitutional (1976 Order and Title IV-E) ruling only as to children living in approved homes. App. 15a-29a. In contrast, it affirmed the district court's due process ruling--and the relief accompanying it--as to children in approved homes and preapproved homes, i.e., all of the plaintiff children. The 1976 Order and Title IV-E therefore offer alternative non-constitutional grounds for affirming the court of appeals' judgment in favor of the children.[8]

Paragraph 4 of the 1976 Order forbids the Director from "'enforcing [Illinois law] and all implementing policies and procedures, insofar as they exclude from eligibility, or deny full [Title IV-E] payments...to [relative] foster children,...when such children...are otherwise eligible for such payments... .'" App. 20a (quoting ¶4, emphasis added). Drawing on the emphasized language, the Director successfully argued to the court of appeals that, because children living in preapproved homes did not reside in "foster family homes" within the meaning of 42 U.S.C. §672(a)(3), they were not "otherwise eligible for...full [Title IV-E] payments" within the meaning of ¶4 and could not claim that provision's protection. App. 28a-29a. See Statement ¶¶3, 4, 7, 11(a) supra (explaining that a "foster family home" under Title IV-E is a home that the state has licensed or approved as meeting its licensing standards, while a preapproved home has had a "safety check" but has not been licensed or approved). By the same token, the court of appeals concluded, the children in preapproved homes could claim no protection under Title IV-E itself. App. 28a-29a. It reasoned that, as Title IV-E did not provide for benefits on behalf of children not living in a "foster family home" as defined by 42 U.S.C. §672(c), these children were "entitled to no relief under...the Social Security Act." App. 29a.

Under the Director's argument and the court of appeals" ruling, only children already

8 Because the Director does not challenge the court of appeals' non-constitutional ruling (Pet. at 5 n.1), regardless of the outcome of his challenge to its constitutional ruling, the relief afforded to the children living in approved homes will stand. See p. 23, supra.

determined eligible for Title IV-E benefits, by virtue of the "licensure" or formal "approval" of the foster home in which they are living, may claim the protection of either ¶4 of the 1976 Order or Title IV-E. Put differently, the court of appeals' ruling limited the reach of both the 1976 Order and Title IV-E to recipients of Title IV-E benefits, i.e., recipients of full foster care benefits for which Illinois receives federal reimbursement, as distinguished from applicants for federally-reimbursable benefits. See Statement ¶12, supra.

A. Children In Preapproved Homes Were Entitled To Relief Under The 1976 Order

Paragraph 4 itself establishes that the reach of the 1976 Order is not limited to recipients of federally-reimbursable Title IV-E benefits, but includes applicants for them. That provision forbids the Director from "enforcing [Illinois law] and all implementing policies and procedures, insofar as they exclude from eligibility, or deny full [Title IV-E] payments" to relative foster children based on their "relative" status. App. 93a (emphasis added). The emphasized language cannot be squared with the conclusion that the 1976 Order does not protect applicants for Title IV-E benefits, for it is only applicants for benefits, never recipients of them, who may be "exclude[d] from eligibility". App. 93a. Reading ¶4 of the 1976 Order not to reach "applicants" therefore reads the prohibition against "policies and procedures" that effect "exclu[sions] from eligibility" out of the provision entirely.

The reference in ¶4 to children who are "otherwise eligible" for full foster care payments does not save the Director's reading of that provision. Reading "otherwise eligible" to require that, to claim the protection of ¶4, relative children must already have been determined eligible for IV-E benefits would validate a state statute that provided that "relative foster children are prohibited from applying for Title IV-E benefits." The same reading would validate an administrative policy that either delayed or held back entirely the processing of applications from relative foster children--thereby "exclud[ing] from eligibility" (App. 93a) some or all relative children based on their relative status. Yet neither of these results could conceivably be squared with the prohibition in ¶4 against "exclusions" of relative foster children from eligibility for Title

IV-E reimbursement.

When this litigation was filed in 1973, DCFS had denied the two named plaintiff Robertson children living in the Youakim home federal foster care benefits, finding them ineligible for the program. Youakim, 440 U.S. at 130. For class membership (indeed class representative) purposes, these children were nonetheless covered under the 1976 Order, which this Court affirmed. Id. at 133-34, 145-46. Yet the court of appeals' reading of the 1976 Order would suggest that these children (the named plaintiffs) could not legitimately claim the protection of that order, because, for lack of the "licensure" or formal "approval" of the Youakim family home, they had not been already determined eligible for IV-E benefits.[9]

B. Children In Preapproved Homes Were Entitled To Relief Under Title IV-E

The court of appeals correctly read Title IV-E not to confer cash benefits on children who do not live in a "foster family home". See 42 U.S.C. §672(a)(3). But it does not follow that children who have no statutory right to benefits under Title IV-E thereby have no other rights under that statute. Nor does it follow that these other rights do not give rise to the relief the

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9 The court of appeals suggests that the Robertson children would be "otherwise eligible" for benefits under its reading of ¶4 because the Youakim home, "ha[d] been approved" by DCFS as "meeting the licensing standards of the State of Illinois." App. 27a (emphasis in original). This suggestion mistakenly equates the term "approv[al]" used by this Court in 1979 with "approval" in 1995. But the Youakim home's "approval" form reveals the mistake. 440 U.S. at 130, n. 8. The Relative Home Placement form, which this Court referred to as the "document[ation]" of approval (id.), was completed on the very same day that DCFS first placed the Robertson children in the Youakim home. 1/7/72 Relative Home Placement Agreement for Timothy Robertson, Attachment I to Verified Complaint (filed March 13, 1973) ("1/7/72 Form"), Supp. App. 51a-52a. This form documents no more substantial a process than the preliminary "safety check" and placement documentation required for preapproval in 1995. Compare 1/7/72 Form with Relative Home Placement Agreement (Supp. App. 58a-59a) attached to Def. Ans. to Plaintiffs' First Interrogatory 4(a), Supp. App. 54a-56a. Compare also, Youakim, 440 U.S. at 130 (unspecified "inspection" prior to completion of 1/7/72 Form) with App. 58a, 61a (specific application, fingerprint reading and criminal background check required under approval rule). Nor can the Director argue, without contradicting his earlier representation to the district court, that an "approved" relative home in Illinois in 1972 met "substantially similar" standards as Illinois required for licensure. See Memorandum in Opposition To Further Amendment of Regulation 5.12 (filed 12/10/76) at 2-4, Supp. App. 62a-64a. In sum, the Youakim home's status in 1972 paralleled the status of the "preapproved", not the "approved", homes in 1995. The court of appeals' understanding of ¶4, if applied in 1976, would thus have foreclosed relief to the named plaintiff Robertson children, whose home was, in effect, "preapproved" only.

district court ordered.

In its 1979 ruling affirming the 1976 Order, this Court stated that "Congress intended no distinction between related and unrelated foster homes" under the federal foster care statute, now Title IV-E. Youakim, 440 U.S. at 135 (emphasis added). It did not exempt the application process from the sweep of its ruling. Accord, id. at 141 ("Congress did not intend to distinguish between related and unrelated foster caretakers"). Therefore, while the "Act did not otherwise entitle" children living in preapproved homes to Title IV-E "benefits" (App. 29a), these children did have a right under Title IV-E to an application process for federally-reimbursed benefits that did not exclude them from eligibility because of their relative status. The district court concluded that the HMR license application process did exclude them on this basis. App. 69a-70a. See Statement ¶17.

Since the Director had violated the children's right under Title IV-E to a license application process that did not exclude them based on their relative status, the district court was required to determine "what relief was appropriate." App. 82a. Appropriate relief, the district court concluded, included a directive that DCFS continue to pay these children the entirely state-funded full foster care benefits they were receiving pending a determination on the merits of each child's licensure application, i.e., pending determination of their application for foster care benefits for which the state would receive federal reimbursement. App. 82a-83a. See Statement ¶11, supra. This relief maintained their status quo as recipients of full benefits (state-funded) and kept them in the same position as children in non-relative homes that had not yet proven they met the new HMR substantive licensure standards. See Statement ¶13, supra. This modest relief for the violation of the children's statutory rights was well within the district court's equitable discretion. See Hills v. Gautreaux, 425 U.S. 284, 297 (1976). In the court of appeals, not even the Director argued otherwise. In sum, the children in preapproved homes did have a Title IV-E right (to an application process for federally-reimbursable foster care benefits that did not exclude them based on their relative status), and the relief the district court ordered for violation of this right was appropriate.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97-35, set out as an Effective Date note under section 1397 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 652, 658, 664, 666, 672, 677, 1320a-2, 1320a-10 of this title; title 26 section 6402.

§ 672. Foster care maintenance payments program

(a) Qualifying children

Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 675(4) of this title) under this part with respect to a child who would meet the requirements of section 606(a) of this title or of section 607 of this title but for his removal from the home of a relative (specified in section 606(a) of this title), if—

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 671(a)(15) of this title have been made;

(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 671 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 671 of this title has made an agreement which is still in effect;

(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination referred to in paragraph (1); and

(4) such child—

(A) received aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 606(a) of this title within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.

In any case where the child is an alien disqualified under section 1255a(h), 1160(f), or 1161(d)(7) [1] of title 8 from receiving aid under

[1] See References in Text note below.

the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 673(a)(2)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.

(b) Additional qualifications

Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 675(4) of this title).

(c) "Foster family home" and "child-care institution" defined

For the purposes of this part, (1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term "child-care institution" means a nonprofit private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Children removed from their homes pursuant to voluntary placement agreements

Notwithstanding any other provision of this subchapter, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a) of this section, only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 627(b) of this title.

(e) Placements in best interest of child

No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) of this section and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) "Voluntary placement" and "voluntary placement agreement" defined

For the purposes of this part and part B of this subchapter, (1) the term "voluntary placement" means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term "voluntary placement agreement" means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) Revocation of voluntary placement agreement

In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a) of this section, and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

(h) Aid to families with dependent children

For purposes of subchapters XIX and XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter. For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.

(Aug. 14, 1935, ch. 531, title IV, § 472, as added and amended June 17, 1980, Pub. L. 96-272, title I, §§ 101(a)(1), 102(a)(1), (2), 94 Stat. 503, 513, 514; Nov. 6, 1986, Pub. L. 99-603, title II,

§ 201(b)(2)(A), title III, §§ 302(b)(2), 303(e)(2), 100 Stat. 3403, 3422, 3431; Dec. 22, 1987, Pub. L. 100-203, title IX, §§ 9133(b)(2), 9139(a), 101 Stat. 1330-314, 1330-321; Oct. 31, 1994, Pub. L. 103-432, title II, § 202(d)(3), 108 Stat. 4454.)

AMENDMENT OF SUBSECTION (d)

Pub. L. 103-432, title II, § 202(d)(3), (e), Oct. 31, 1994, 108 Stat. 4454, provided that, effective with respect to fiscal years beginning on or after Apr. 1, 1996, subsection (d) of this section is amended by striking out "section 627(b) of this title" and inserting "section 622(b)(9) of this title".

20 ILCS 505/5. Direct child welfare services

§ 5. To provide direct child welfare services when not available through other public or private child care or program facilities.

(u–5) Effective July 1, 1995, only foster care placements licensed as foster family homes pursuant to the Child Care Act of 1969 [19] shall be eligible to receive foster care payments from the Department. Relative caregivers who, as of July 1, 1995, were approved pursuant to approved relative placement rules previously promulgated by the Department at 89 Ill.Adm.Code 335 and had submitted an application for licensure as a foster family home may continue to receive foster care payments only until the Department determines that they may be licensed as a foster family home or that their application for licensure is denied or until September 30, 1995, whichever occurs first.

20 ILCS 505/7. Placement; religious beliefs; placement with relative

Text of section effective until the effective date of P.A. 89-422 *

§ 7. (a) In placing any child under this Act, the Department shall place such child, as far as possible, in the care and custody of some individual holding the same religious belief as the parents of the child, or with some child care facility which is operated by persons of like religious faith as the parents of such child.

(b) In placing a child under this Act, the Department may place a child with a relative if the Department has reason to believe that the relative will be able to adequately provide for the child's safety and welfare. The Department may not place a child with a relative, with the exception of certain circumstances which may be waived as defined by the Department in rules, if the results of a check of the Law Enforcement Agency Data System (LEADS) identifies a prior criminal conviction of the relative or any adult member of the relative's household for any of the following offenses under the Criminal Code of 1961: [1]

(1) murder;

(1.1) solicitation of murder;

(1.2) solicitation of murder for hire;

(1.3) intentional homicide of an unborn child;

(1.4) voluntary manslaughter of an unborn child;

(1.5) involuntary manslaughter;

(1.6) reckless homicide;

(1.7) concealment of a homicidal death;

(1.8) involuntary manslaughter of an unborn child;

(1.9) reckless homicide of an unborn child;

(1.10) drug-induced homicide;

(2) a sex offense under Article 11,[2] except offenses described in Sections 11-7, 11-8, 11-12 and 11-13;

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*[Respondents' Note. P.A. 89-422, signed into law on December 4, 1995, added subsections (c), (d), and (e) to 20 ILCS 505/7; these subsections are not relevant here. P.A. 89-422 did not amend the text of subsections (a) and (b), as amended by P.A. 89-21.]

(3) kidnapping;

(3.1) aggravated unlawful restraint;

(3.2) forcible detention;

(3.3) aiding and abetting child abduction;

(4) aggravated kidnapping;

(5) child abduction;

(6) aggravated battery of a child;

(7) criminal sexual assault;

(8) aggravated criminal sexual assault;

(8.1) predatory criminal sexual assault of a child;

(9) criminal sexual abuse;

(10) aggravated sexual abuse;

(11) heinous battery;

(12) aggravated battery with a firearm;

(13) tampering with food, drugs, or cosmetics;

(14) drug-induced infliction of great bodily harm;

(15) aggravated stalking;

(16) home invasion;

(17) vehicular invasion;

(18) criminal transmission of HIV;

(19) criminal neglect of an elderly or disabled person;

(20) child abandonment;

(21) endangering the life or health of a child;

(22) ritual mutilation;

(23) ritualized abuse of a child;

(24) an offense in any other state the elements of which are similar and bear a substantial relationship to any of the foregoing offenses.

For the purpose of this subsection, "relative" shall include any person, 21 years of age or over, other than the parent, who (i) is currently related to the child in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, great-uncle, or great-aunt; or (ii) is the spouse of such a relative; or (iii) is the child's step-father, step-mother, or adult step-brother or step-sister; "relative" also includes a person related in any of the foregoing ways to a sibling of a child, even though the person is not related to the child, when the child and its sibling are placed together with that person. A relative with whom a child is placed pursuant to this subsection may, but is not required to, apply for licensure as a foster family home pursuant to the Child Care Act of 1969; [3] provided, however, that as of July 1, 1995, foster care payments shall be made only to licensed foster family homes pursuant to the terms of Section 5 of this Act.

Amended by P.A. 89-21, Art. 5, § 5-15, eff. July 1, 1995; P.A. 89-428, Art. 2, § 210, eff. Dec. 13, 1995.

[1] 720 ILCS 5/1-1 et seq.

[2] 720 ILCS 5/11-1 et seq.

[3] 225 ILCS 10/1 et seq.

For text of section effective upon the effective date of P.A. 89-422, see 20 ILCS 505/7, post.

For effective date of P.A. 89-422, see Historical and Statutory Notes, post.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

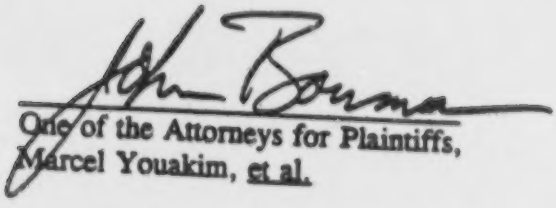
MARCEL YOUAKIM, et al.,	)	
	)	
Plaintiffs,	)	No. 73 C 635
	)	
v.	)	Judge John A. Nordberg
	)	
JESS MCDONALD, Director, Illinois Department of Children and Family Services,	)	
	)	
Defendant.	)	

FIRST STIPULATIONS OF UNCONTESTED FACT

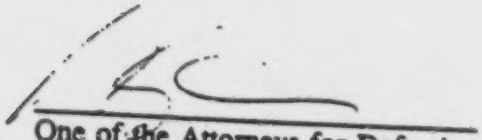
Plaintiffs, Marcel Youakim, et al., and defendant, Jess McDonald, Director of the Illinois Department of Children and Family Services ("DCFS"), through their undersigned counsel, hereby stipulate as follows:

14. Prior to the HMR Reform, DCFS paid the foster care payment rate to relative caregivers for the care of DCFS wards, regardless of the approval, licensing, or Title IV-E eligibility status of the relative home or child.

So Stipulated:



One of the Attorneys for Plaintiffs,
Marcel Youakim, et al.



One of the Attorneys for Defendant,
Jess McDonald, Director,
Illinois Department of Children
and Family Services

Dated: Chicago, Illinois
June 1, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM, et al., Plaintiffs	)	
v.	)	73 C 635
JESS MCDONALD, DIRECTOR, ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, etc.	)	Judge Nordberg
Defendants.	)	

CROSS-EXAMINATION OF MARY SUE MORSCH
TAKEN FROM HER DEPOSITION OF MAY 19, 1995

The plaintiffs designate the attached excerpts from the deposition testimony of Mary Sue Morsch as their cross-examination of Ms. Morsch in this matter.

Respectfully submitted

Michelle Gilbert
One of the Attorneys for Plaintiffs

Dated: June 16, 1995

JOHN BOUMAN
ROBERT LEHRER
DIANE REDLEAF
STACY PLATT
MICHELLE GILBERT
LEGAL ASSISTANCE FOUNDATION OF CHICAGO
343 S. DEARBORN
CHICAGO, IL 60604
(312) 341-1070

Q Is there any plan in the HMR Reform Plan to change the benefits for licensed relatives depending on whether children were removed from their home or not?

MS. TCHEN: You're talking about people who are currently wards of the state?

MS. REDLEAF: Q Yes, who were not removed from the relative, is there any plan to reduce their

individuals' foster care benefits?

THE WITNESS: A No.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Stuart Cunningham
CLERK

Office of the Clerk

Robert E. Lehrer
Legal Assistance Foundation of Chicago
343 South Dearborn Street
Suite 700
Chicago, IL 60604

Case Number: 1:73-cv-00635

Title: Youakim v. Miller

Assigned Judge: Honorable John A. Nordberg

MINUTE ORDER of 12/21/95 by Hon. John A. Nordberg : Pursuant to the 12/06/95 order of the Seventh Circuit, the portion of this court's 06/30/95 order that states "until defendants have complied with the instructions of this rt detailed in a memorandum opinion and order issued today" is stricken and replaced with "until defendants have provided plaintiffs with an adequate opportunity to have a license application determined on its merits," so that the terminating, suspending, or reducing foster care payments to relative foster children currently receiving them until defendants have provided plaintiffs with an adequate opportunity to have a license application determined on its merits. Mailed notice

This docket entry was made by the Clerk on December 22, 1995

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

RECEIVED
BY MAIL ☐
BY HAND ☐

JUL 14 1995

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

July 12, 1995

Before

Hon. RICHARD A. POSNER, *Chief Judge*

Hon. JOHN L. COFFEY, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

MARCEL YOUAKIM, LINDA YOUAKIM, individually, and as foster parents, and TIMOTHY ROBERTSON, and all others similarly situated, Plaintiffs-Appellees,	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 95-2575 v.	No. 73 C 635
JESS MCDONALD, Director, Illinois Department of Children and Family Services, Defendant-Appellant.	John A. Nordberg, Judge.

The following are before the court:

1. MOTION TO STAY INJUNCTION PENDING APPEAL filed 7/5/95, by counsel for the appellant.

2. APPELLEE FOSTER CHILDREN'S MEMORANDUM IN OPPOSITION DEFENDANT-APPELLANT'S MOTION TO STAY INJUNCTION filed 7/12/95, by counsel.

IT IS ORDERED that the motion to stay injunction pending appeal is GRANTED. The district court order is STAYED pending resolution of this appeal or further court order.

DOCKETED
JUL 14 1995

United States Court of Appeals

FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

October 10, *1995*

Before

Hon. Harlington Wood, Jr., Circuit Judge

Hon. Ilana Diamond Rovner, Circuit Judge

Hon. Terence T. Evans, Circuit Judge

No. 95-2575

MARCEL YOUAKIM, LINDA YOUAKIM, individually, and as foster parents, and TIMOTHY ROBERTSON, and all others similarly situated,	] Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Plaintiffs-Appellees,	]
v.	] No. 73 C 635
JESS MCDONALD, Director, Illinois Department of Children and Family Services,	]
Defendant-Appellant.	] John A. Nordberg, Judge.

The following are before the court:

1. DEFENDANT'S EMERGENCY MOTION FOR RECONSIDERATION OF ORDER VACATING STAY OF INJUNCTION, WITH SUGGESTION FOR RECONSIDERATION EN BANC OF ORDER AND REHEARING EN BANC OF MERITS filed September 29, 1995 by counsel for appellant.

2. FOSTER CHILDREN'S MEMORANDUM IN OPPOSITION TO DCFS DIRECTOR'S (1) MOTION FOR RECONSIDERATION OF PANEL'S ORDER VACATING STAY; (2) SUGGESTION (MOTION) FOR EN BANC RECONSIDERATION OF PANEL'S ORDER VACATING STAY; AND (3) SUGGESTION FOR REHEARING EN BANC OF MERITS, AFTER MERITS

PANEL ASSIGNED TO THE CASE HAS HEARD ORAL ARGUMENT, BUT PRIOR TO ITS RULING ON THE MERITS filed October 3, 1995 by counsel for appellees.

IT IS ORDERED that the emergency motion for reconsideration of order vacating stay of injunction is GRANTED. After our order lifting the stay issued, DCFS informed us of its decision to extend the September 30, 1995 cut-off date to January 1, 1996. In light of that change in circumstances, we reinstate the stay entered by the motions panel on July 12, 1995, pending resolution of this appeal or further court order. The suggestion for rehearing en banc of the merits is DENIED.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

December 21, 1995

Before

Hon. HARLINGTON WOOD, Jr. *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

MARCEL YOUAKIM, LINDA YOUAKIM, individually, and as foster parents, and TIMOTHY ROBERTSON, and all others similarly situated, MARCEL YOUAKIM, individually and as a foster parent, Plaintiffs-Appellees, Cross-Appellants, Nos. 95-2575 and 95-2813 v. JESS MCDONALD, Director, Illinois Department of Children and Family Services, Defendant-Appellant, Cross-Appellee, and ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 73 C 635 John A. Nordberg, Judge.

The following are before the court:

1. DEFENDANT-APPELLANT'S MOTION TO REINSTATE THE STAY OF INJUNCTION PENDING DISPOSITION OF PETITION FOR REHEARING, WITH SUGGESTION FOR REHEARING EN BANC filed 12/15/95, by counsel for defendant Jess McDonald.

2. FOSTER CHILDREN'S MEMORANDUM IN OPPOSITION TO DFCS DIRECTOR'S MOTION TO REINSTATE THE STAY OF INJUNCTION PENDING DISPOSITION OF PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC filed 12/20/95, by counsel for the plaintiffs.

(over)

IT IS ORDERED that the motion is **GRANTED** in part and **DENIED** in part. The district court's June 30, 1995 order is **STAYED** insofar as it relates to children in unapproved relative homes pending resolution of the Director's Petition for Rehearing with Suggestion for Rehearing En Banc. All other relief requested in the Director's motion is **DENIED**.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM, et al.,	)	
	)	
Plaintiffs,	)	**73 C 635**
v.	)	
	)	
	)	**Judge John A. Nordberg**
JESS MCDONALD, etc. ,	)	
	)	
Defendant.	)	

INTERIM INJUNCTIVE ORDER

This Court's Memorandum Opinion and Order dated June 30, 1995 (the "June 30 Order"), was affirmed as modified by the ruling in Youakim v. McDonald, 71 F.3d 1274 (7th Cir. 1995). In the June 30 Order, this Court determined that it was necessary to modify the August 24, 1976, Judgment and Order in this case (the "1976 Judgment"), and, pursuant to 28 U.S.C. § 2202, to afford the plaintiff foster children further injunctive relief. This interim order is being entered by this Court strictly for the purposes of implementing this Court's June 30 Order, as provided below.

Defendant's appeal to the court of appeals has now been resolved and all stay orders dissolved. The parties have met and agreed to the entry of this interim order, which is intended to provide the promptest possible provision of partial relief to the plaintiff foster children. This Court, after further submissions by the parties, intends to enter a Final Judgment Order that, when read with this interim order and any other interim orders that may be entered, will afford full relief to all of the plaintiff foster children entitled to it under the June 30 Order.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

DEFINITIONS

1. For purposes of this order, the following terms shall have the meanings indicated:

(a) "Foster children" means children whose care and custody is the responsibility of the State of Illinois Department of Children and Family Services; "relative foster children" means such foster children who are placed with foster parents who are their relatives.

(b) "Relative foster parents" means the relative caretakers with whom relative foster children are or have been placed by DCFS.

(c) "Plaintiff" means: any relative foster child whose care and custody was or is the responsibility of DCFS, and who was living with relative foster parents as of June 30, 1995; and such a child's relative foster parents as of June 30, 1995. This definition is used solely to refer to the members of the class of persons who are to receive relief under this order, and it is not intended to limit or redefine the plaintiff class already certified in this action.

(d) "Child living in a preapproved (i.e., unlicensed and unapproved) home" means a plaintiff child who, as of June 30, 1995, was living in a home that had passed an initial safety check, but that DCFS had neither licensed as a foster family home nor approved as meeting the standards established for such licensing.

(e) "Child living in an approved home" means a plaintiff child who, as of June 30, 1995, was living in a home that DCFS had approved as meeting the licensing standards for foster family homes.

(f) "Defendant" means defendant Jess McDonald, Director of DCFS. In addition to defendant, the terms of this order shall bind defendant's successor(s) in office, including those with the responsibility for administering any successor agency performing the functions currently performed by DCFS, and defendant's and his successor(s)' employees, agents, and anyone else acting under his or their direction or in concert with him or them.

(g) "Full foster care payments" means the board payment amount provided by DCFS at the rate applicable to non-specialized licensed foster care under 89 Ill. Adm. Code § 359. Such

benefits are intended for the care of relative foster children only, even though received by the children's relative foster parents.

(h) "Out-of-Illinois relative foster children" means relative foster children who live in relative foster homes outside of Illinois.

(i) "State of residence" means the state, district, territory, or country of residence for out-of-Illinois relative foster children.

(j) "Final adverse determination of a licensing application" means the earlier of the date the relative foster parent withdraws the licensure application under DCFS Procedure 402, or the date of a notice to a relative foster home informing it that the licensure application is denied, provided, however, that the exercise of the right of the relative foster parent to maintenance of benefits pending an appeal filed within 10 days of the denial tolls the "final adverse determination" until an administrative appeal decision is issued.

(k) "Termination," when used in connection with full foster care payments, means to end payment of any foster care benefits on behalf of a relative foster child in a foster family, even though the foster child may continue to receive payments under the Aid to Families with Dependent Children ("AFDC") program, including AFDC supplements paid by DCFS.

INTERIM INJUNCTIVE RELIEF

2. Defendant is ordered to continue paying full foster care payments after January 1, 1996, on behalf of plaintiff children living in approved homes who: (a) continue to live in the same relative foster home as they lived in prior to July 1, 1995; (b) reside in Illinois; (c) live in homes that submitted a foster home conversion licensing application postmarked by July 1, 1995; and (d) live in homes whose licensing application the defendant has not yet finally determined.

3. Defendant is ordered to restore full foster care payments, effective January 1, 1996, to children living in

preapproved (i.e., unlicensed and unapproved) homes who: (a) continue to live in the same relative foster home as they lived in prior to July 1, 1995; (b) reside in Illinois; and (c) live in homes for which no licensing application has been filed prior to the date of this order, or, if a licensing application has been filed, defendant has not made a final determination of the application as of the date of this order. DCFS shall make all efforts within its control to ensure that the first payments made under this paragraph (those for January 1996) are mailed as close in time as possible to February 23, 1996. If such payments are not mailed by or on February 23, 1996, defendant's counsel shall inform plaintiffs' counsel in writing by 5:00 p.m. on February 26, 1996, of the reason such payments were not mailed and when DCFS expects the payments to be mailed.

4. Defendant is ordered to provide the following license application notice and procedures to the relative foster homes of plaintiff children whose full foster care payments are restored under paragraph 3 above, if the relative foster homes in which such children live have not applied for a license prior to the date of this order. If these relative foster homes do not comply with the deadlines set forth in the following application procedure, the defendant may, consistent with this paragraph and paragraph 7, terminate full foster care payments to the plaintiff children in such homes.

(a) Defendant shall mail a written notice (a copy of

which is attached hereto as Exhibit A) to all relative foster homes that care for plaintiff children whose benefits are restored under paragraph 3, and for which no licensing application has been filed as of the date of this order. This written notice (which shall be mailed no later than the same day as it is dated) shall include: (i) all forms necessary to complete an application for a foster home license, consistent with the definition of an application for a foster home license set forth in the Illinois Child Care Act of 1969, 225 ILCS 10/4, as amended by P.A. 89-21; (ii) all other materials and information specified in this order (including the Exhibit A notice) to be included with the mailing. Defendant shall maintain a 1-800 number for the purpose of receiving requests for application forms and instructions, and shall mail such forms and instructions to each person requesting them within one business day of the request.

(b) The plaintiff foster parents shall have 45 days from the date of the Exhibit A notice to mail the following documents to the DCFS Central Licensing Office in Springfield: (i) a completed Application for Foster Family Home License (Form CFS 597A); (ii) a completed Authorization for Background Check for all members of the home 18 years of age and older (Form CFS 597A-1), excepting the plaintiff child, (iii) a completed Foster Family Home Information sheet (Form CFS 506); and (iv) proof that every person age 18 and above living in the home, other than

plaintiff foster children, have been fingerprinted in accordance with the licensing application instructions. Subject to paragraph 9 below, proof of fingerprinting shall be a fingerprint receipt from a DCFS fingerprint provider.

(c) The plaintiff foster parents shall have 75 days from the date of mailing of the Exhibit A notice to: (i) complete six hours of foster parent training required for licensure; and (ii) mail to the DCFS Central Licensing Office a completed medical report as to the applicant foster parent(s). Defendant shall also include with the Exhibit A notice the appropriate medical form for the applicant to use. In lieu of submitting this medical form, the plaintiff foster parent(s) may submit any equivalent medical report (i.e., any medical report that provides at a minimum the same information required by the DCFS medical form), including medical reports previously submitted to DCFS, provided that a physician has completed the report within one year prior to the date of the Exhibit A notice.

5. Defendant is ordered to restore full foster care payments effective January 1, 1996, to plaintiff children who are out-of-Illinois relative foster children who: (a) continue to live in the same relative foster home as they lived in prior to July 1, 1995; and (b) live in homes for which no licensing or approval application with their state of residence has been filed prior to the date of this order, or, if such an application has been filed, the state of residence has not made a final

determination of the application as of the date of this order. DCFS shall make all efforts within its control to ensure that the first payments made under this paragraph (those for January 1996) are mailed as close in time as possible to February 23, 1996. If such payments are not mailed by or on February 23, 1996, defendant's counsel shall inform plaintiffs' counsel in writing by 5:00 p.m. on February 26, 1996, of the reason such payments were not mailed and when DCFS expects the payments to be mailed.

6. Defendant is ordered to provide the following license application notice and procedures to the plaintiff children whose full foster care payments are restored under paragraph 5 above, if, according to DCFS records, the relative foster homes in which such children live have not applied for a license or its equivalent with their state of residence prior to the date of this order. If the relative foster homes do not comply with the deadlines set forth in the following application procedure, the defendant may terminate full foster care payments to the plaintiff children in such home in accordance with the procedures set forth in paragraph 7 below:

(a) Defendant shall send a written notice (a copy of which is attached hereto as Exhibit B) via first class mail to the relative foster homes of plaintiff children whose full foster care payments are restored under paragraph 5 above, and whose relative foster homes have not, according to DCFS records, applied for a license or its equivalent prior to the date of this

order. The notice shall be mailed no later than the same day as it is dated and shall inform such relative foster homes that, if they have not already done so, they will have 45 days from the date of the notice to submit an application for a license or its equivalent in their state of residence. The notice will also inform the plaintiff foster parent(s) in the home that they must, within the same 45 days mail to defendant documentation from any official representative of the state of residence confirming that the caregiver has applied for licensure or its equivalent. Defendant shall send with the notice a form (substantially similar to Form ORC-2), which the plaintiff foster parent may use to obtain the signature of such an official, and this form, executed by the official, shall constitute adequate documentation. Documentation may also consist of a receipt issued in the state-of-residence, or a copy of the application marked "filed", or a written statement, letter or other document from a licensing worker or other appropriate official in the state of residence indicating that an application has been submitted.

(b) The plaintiff foster parents of out-of-Illinois relative foster children shall be responsible for providing defendant a copy of their license or equivalent document if their application is approved in the state of residence. If the application is denied, the plaintiff foster parents must promptly inform defendant of the denial. Defendant may terminate the full

foster care benefits paid to out-of-Illinois relative foster children only after a final adverse determination of their foster parents' applications for a license or equivalent by the state of residence. Nothing in this order bars defendant from communicating as it sees fit with the licensing agency in the state of residence respecting the process for determination of applications, or the progress in determining a particular application.

7. Subject to the other requirements of this order, including but not limited to the ones in this paragraph and paragraph 10 below, defendant may terminate full foster care payments to: (i) a plaintiff child described in paragraph 3 above who lives in a home for which no licensing application has been filed prior to the date of this order, if the child's plaintiff foster parent(s) fail to mail a complete application to DCFS postmarked on or prior to the 45th calendar day following the date of the mailing of the Exhibit A notice, or if the plaintiff child's foster parent(s) fail to complete the training and medical form requirement on or prior to the 75th day following the date of the mailing of the notice; and (ii) an out-of-Illinois relative foster child whose foster home is sent the written notice required under paragraph 6(a) above, if the plaintiff child's foster parent(s) fail to inform DCFS, in accordance with the requirements of paragraph 6(a) above, that they have filed a license or equivalent application with the

state of residence.

(a) Defendant is ordered to provide notice and the opportunity for an appeal to plaintiffs under 89 Ill. Adm. Code § 338 when defendant decides to terminate the full foster care payments of plaintiff children for failure of their plaintiff foster parents to meet any deadline set forth in this order. Plaintiff foster parents will have 30 days from the date of the notice within which to file an appeal. The parties do not intend this order to create any independent federal cause of action under which to enforce any of the provisions of 89 Ill. Adm. Code § 338, provided, however, that plaintiffs may enforce in this case their rights to notice and the opportunity for an appeal as provided in this order.

(b) The notice under paragraph 7(a) (a copy of which is attached hereto as Exhibit C) shall state which requirement(s) defendant has determined that a plaintiff foster parent has not met, including which forms, if any, the plaintiff foster parent has not submitted in a timely or complete manner. It shall also provide information about the right to appeal, including the right to continued full foster care payments upon filing an appeal within 10 days of the date of denial, subject to overpayment procedures if the appeal determination is adverse to the appellant. If a plaintiff foster parent prevails on appeal, full foster care payments for the plaintiff children in the parent's care shall be reinstated effective on the date on which

those payments were terminated pursuant to the decision under appeal.

8. Defendant may terminate full foster care payments paid pursuant to paragraphs 2 and 3 above for plaintiffs who submitted a foster home licensure application prior to the date of this order, and who either: live in homes that have filed a complete application for a foster home license on which a final adverse determination has been made; or live in homes in which members have failed to complete a specific licensing requirement, such as training, fingerprinting, or submission of medical forms, within required deadlines, subject to timely notice of the plaintiff's right to appeal and to secure continued payments pending appeal.

9. Plaintiff foster parents must submit proof that all members of the home 18 years of age and older who are not plaintiff children have been fingerprinted in accordance with the licensing application instructions. Such proof shall consist of a receipt from the fingerprint provider. DCFS shall cause to be made available a replacement receipt for plaintiff foster parents who lose the original receipt, and who request a replacement from the provider as explained in the Exhibit A notice. If, in an appeal under 89 Ill. Adm. Code § 338, a plaintiff foster parent contends that (s)he and all members of the home 18 years of age and older were fingerprinted in accordance with licensing application instructions but nonetheless does not have the required fingerprint receipt, DCFS shall attempt to verify that

contention by means of a list provided by its fingerprinting providers of all persons the provider has fingerprinted, and the date of fingerprinting. If the providers' list does not indicate that the member of the home claiming to have been fingerprinted was fingerprinted, that member shall be deemed not to have been fingerprinted. If the providers' list indicates that the member of the home claiming to have been fingerprinted was fingerprinted, that member shall be deemed to have been fingerprinted.

10. If any notice and forms sent to plaintiff foster parents under either paragraph 4 or paragraph 6 above are returned to DCFS (by the U.S. Post Office) as undelivered, DCFS shall attempt to redeliver those returned notices and forms. The notices DCFS attempts to redeliver shall be redated, and plaintiffs to whom DCFS attempts to redeliver such notices shall be afforded the full 45-day and 75-day deadlines provided for under paragraphs 4(b) and (c) and paragraph 6(a) above. Except as authorized by further order of this Court, defendant, after compliance with the notice and appeal requirements of this order, may terminate full foster care benefits to those homes to which DCFS attempts to redeliver notices and forms only if: (i) notices and forms DCFS attempts to redeliver by remailing are not returned as undelivered to DCFS; (ii) the foster parent's receipt of the notices and forms DCFS attempts to redeliver by means other than remailing is evidenced by a signed writing, and the

foster parent thereafter does not comply with the applicable deadlines provided for in this order; (iii) plaintiff children are not cared for in such homes; or (iv) counsel for plaintiffs agrees that DCFS has a reasonable basis for concluding that the children in such homes are no longer eligible for such benefits, provided that counsel for plaintiffs will not unreasonably withhold their stipulated agreement. If notices and forms DCFS attempts to redeliver by remailing are returned a second time as undelivered, defendant shall notify plaintiffs' counsel in writing that they have been returned. Plaintiffs' counsel and defendant's counsel shall then confer within a reasonably short time thereafter for the purpose of reaching agreement as to the appropriate means of resolving the fact that the notices and forms sent to certain plaintiffs were returned as undelivered.

ADDITIONAL PROVISIONS

11. This Court may also issue other relief orders to secure for the foster children the relief to which they are entitled. The failure to afford particular relief in this order is not to be construed as an adjudication that plaintiffs will not be entitled to such relief or other relief as part of a future order (including a Final Judgment Order) and is not meant to prejudice plaintiffs' right to seek relief in addition to that provided for in this order, or defendant's right to object.

12. Nothing in this order is to be construed to limit the implementation of the HMR Reform with respect to children placed

by DCFS with relative foster parents on or after July 1, 1995.

13. This Court shall retain continuing jurisdiction over this case, including enforcement of this order.

ENTER: John A. Nordberg
JOHN A. NORDBERG
UNITED STATES DISTRICT JUDGE

DATE: February 16, 1996

Date:_____

IMPORTANT NOTICE ABOUT FOSTER CARE PAYMENTS

The Illinois Department of Children and Family Services ("DCFS") is restoring full foster care payments for your relative foster child(ren). To keep full foster care payments coming, you must apply for a license by the deadlines described below.

Dear Relative Caregiver:

Your foster care payments were reduced to the "standard of need" rate last August under a new state law. Relative caregivers like you challenged this state law in federal court. The court found that cutting your relative foster child(ren's) benefits without giving you a fair chance to get a foster home license was illegal. And the court has now ordered DCFS to raise your payments back to the full foster care rate while you are given a fair chance to get a license.

Specifically, the federal court ordered DCFS to restore full foster care payments to you, beginning with the check you receive in February 1996 (for care you provided in January 1996).

This notice informs you of how your relative foster children can qualify for full foster care payments. To qualify, your home must be licensed.

Our records show that:

- You care for a related child who was placed with you by DCFS before July 1, 1995;
- Your home is not currently licensed as a foster family home; and
- DCFS has not received a licensing application from you.

The first step in getting a license is to apply for one. This notice explains how to do that, and about the time deadlines for applying.

(Insert in Spanish)

This is an important letter about restoration of full foster care payments you receive for DCFS children in your home and about the opportunity you have to keep those payments coming by applying for a foster home license within certain time deadlines. If you cannot understand this letter, or if you do not have someone who can explain it to you, please call 1-800-232-3798 for help.

Exhibit A

The full foster care payments that the court has ordered will continue if you send in a timely license application as explained below. You do not need to apply for a foster home license or be trained or fingerprinted in order to keep the DCFS child in your home. However, your payments will be cut again if:

- You do not mail the enclosed foster home license applications and licensing materials by _____ (see the "Application" section, below); or
- You do not complete the required training or submit the required medical forms by _____ (see the "Training" and "Medical Forms" sections, below); or
- Your licensing application is denied (subject to your right to appeal) or withdrawn.

APPLICATION PROCESS

1. **Forms:** To file an application for a license and to continue to receive full foster care payments you must fully complete the following three forms, and mail those forms and the described fingerprint receipts to the address below:

   - an *"Application for Foster Family Home License"* (Form CFS 597A). If you live with your spouse, both of you must be applicants;
   - an *"Authorization for Background Check"* Form CFS 497A-1) for yourself and every person 18 years of age or older living in your home (other than the foster child);
   - a *"Foster Family Home Information"* sheet (Form CFS 506); and
   - *Fingerprint receipts* for every person age 18 and above living in your home (other than the foster child). Receipts are given out at the fingerprint facility. (See the "Getting Fingerprinted" section, below.) SAVE YOUR FINGERPRINT RECEIPTS.

   The licensing application forms are included with this notice.

2. **Mailing: Where To Send The Licensing Application Forms:** After completing the above forms, place them in an envelope and mail them *directly* to DCFS at the following address:

   DCFS
   Central Office of Licensing--FIN
   Mail Station 60
   406 East Monroe Street
   Springfield, Illinois 62701

3. **Deadline For Submitting Licensing Application Forms** Your new application forms must be mailed and postmarked no later than _____, or your payments will be dropped to the lower "standard of need" rate.

GETTING FINGERPRINTED

The new state law requires that anyone who applies for a foster home license, and every person age 18 and over who lives in the applicant's home, must be fingerprinted at one of the State's authorized fingerprinting locations. Once a person's fingerprints are taken, the fingerprint operator will give him/her a receipt. KEEP THE RECEIPT. You must include your fingerprint receipt for you and every person age 18 and over living in your home in the application materials you send to DCFS by _____.

To get fingerprinted, you and every person age 18 and above living in your home must schedule a fingerprinting appointment by calling the fingerprint operator directly at 1-800-377-2080. The State has made arrangements with the fingerprint operator to provide enough slots for everyone to be fingerprinted, but it is important that you call the 800 number immediately to schedule an appointment so that all fingerprinting is completed before the _____ deadline. The fingerprint sites are open Monday through Friday, 8:00 a.m.-5:00 p.m.

If you or anyone else in your family who has been fingerprinted loses his/her fingerprint receipt, you or s/he can get a duplicate receipt mailed to you by phoning the fingerprint operator at the 800 number above. Please hold on to your original receipt and only phone for a duplicate receipt as a last resort.

TRAINING

To continue receiving the full foster care payment while your licensing application is being processed by DCFS, and to qualify for a foster home license, you must complete 6 hours of foster parent training by _____. You must apply with your spouse if you live together, and then *both* of you must attend the required training.

To help you meet the training requirement, DCFS has scheduled foster parent training sessions throughout the state. A list of training registration locations provided by DCFS is enclosed with this notice. The list includes the names and phone numbers of contact person(s) for each location. To find out when training sessions will be held and to register for DCFS training, call the contact person listed for the site nearest you.

If a private agency is handling your foster child's case, training that is available from your private agency may satisfy the training requirement if it has been approved by DCFS. To find out if your agency's training has been approved and/or if your private agency has training sessions scheduled, contact your private agency caseworker. Even if you are working with a private agency, the DCFS training sessions are open to you, so plan to attend the training session that is most convenient for you and that will help you meet the training deadline.

If you are absolutely unable to attend any of the scheduled training sessions because of a disability or because your work schedule prevents you from attending the sessions, you *may* be eligible to meet the training requirement in your home with a self-study packet. Request a self-

study packet by enclosing a written request for it with your license application materials.

MEDICAL FORMS

To continue receiving the full foster care payment while your licensing application is being processed by DCFS, and to qualify for a foster home license, you must submit completed medical reports for you (and your spouse, if your spouse is applying) to the DCFS address in Springfield set forth on page 2 above. Your forms must be sent and postmarked by _____.

Appropriate medical forms are included with this notice. However, you may submit equivalent medical forms (forms that provide, at a minimum, the same information as required by the DCFS medical forms) if a physician completed them within one year prior to the date of this notice.

COOPERATION WITH THE REST OF THE LICENSING PROCESS

After you submit your license application, complete training, and submit your medical forms, a licensing worker from DCFS or your private agency will visit you to determine whether your home meets licensing standards.

You may also have to send DCFS additional materials, depending on the particular conditions of your home. Your licensing worker will inform you of any additional materials you must submit.

Failure to cooperate with the licensing worker could lead to your application being denied and your payments being reduced, but you will have the right to appeal such a decision.

WHAT HAPPENS IF YOU MISS A DEADLINE

1. Application Materials Deadline: _____

   If your licensing application materials are not mailed to DCFS in Springfield and postmarked on or before _____, your payments will be cut to the "standard of need" rate. The payment will be increased to the higher full foster care payment rate only after you later apply for a license and actually become licensed.

2. Training and Medical Forms Deadline: _____

   If you have not completed training by _____, *or* if your medical forms were not mailed to Springfield with a postmark on or before _____, your payments will be lowered to the "standard of need" rate. The payments will be increased to the higher full foster care payment rate only after you later apply for a license and actually become licensed.

DCFS LICENSING DECISION

If DCFS issues you a license, you will continue to receive foster care payments at the full foster

care rate.

If your application for a license is denied, you will receive a written notice explaining the reason(s) for the denial. You may be able to continue to care for children placed in your home, but your payments will be cut to the "standard of need" rate.

If you disagree with the reason(s) for denial of your application, you may appeal the denial. If you appeal within 10 days after the date of denial, full payments will continue, if you choose, while the appeal is pending. The notice you will receive if you are denied a license will tell you more about your appeal rights, including the right to continued full payments pending appeal.

At a later time, if the reason your application for license was denied has been corrected, you may apply for a license again. You will be paid at the lower "standard of need' rate until your application is granted and you receive a license.

WHERE TO GET MORE INFORMATION OR HELP

If you need help with this application (including help with mailing the application) or more information about the application process, please contact your caseworker. If you need more copies of the licensing application or medical forms, please call the Ombuds' Office at 1-800-232-3798.

If your foster child's case is with a private agency and you do not know how to contact your caseworker, look at the list of all private agencies that has been included with this notice. For each agency listed, there is a contact person and his/her phone number. The contact persons will be able to answer your questions and give you the name and phone number of your caseworker, or your worker's supervisor.

If your foster child's case is with DCFS and you do not know how to contact your caseworker, look at the list of DCFS contacts that has been included with this notice. Each contact person is listed by office location. He/she will be able to answer your questions or give you the name and phone number of your caseworker, or your worker's supervisor.

If you have other questions, or if you cannot reach your caseworker or a contact person, you can call the DCFS Ombuds' Office at 1-800-232-3798. For the next 45 days, the Ombuds' Office will be open from 8:30 a.m. to 8:00 p.m., Monday through Friday.

MAKE SURE YOU MEET THE DEADLINES. DON'T WAIT FOR A PHONE CALL TO SEND IN YOUR FORMS.

SAVE THIS NOTICE in case questions about your license application or foster care payments come up later.

Date:_____

IMPORTANT NOTICE ABOUT FOSTER CARE PAYMENTS

The Illinois Department of Children and Family Services ("DCFS") is restoring full foster care payments for your relative foster child(ren). To keep full foster care payments coming, you must apply for a license as described below.

Dear Relative Caregiver:

Your foster care payments were reduced to the "standard of need" rate last August under a new state law. Relative caregivers challenged this state law in federal court. The court found that cutting your relative foster child(ren's) benefits without giving you a fair chance to get a foster home license was illegal. And the court has now ordered DCFS to raise your payments back to the full foster care rate while you are given a fair chance to get a license.

Specifically, the federal court ordered DCFS to restore full foster care payments to you, beginning with the check you receive in February 1996 (for care you provided in January 1996).

This notice informs you of how your relative foster children can continue to receive full foster care payments. To qualify for such payments, your foster home must be licensed in your home state. Some states may call this an "approval" or "certification" instead of a license.

Our records show that:

- You care for a related child who was placed with you by DCFS before July 1, 1995;
- Your home is not currently licensed as a foster family home; and
- DCFS has not received a certification from you that you have filed a foster home license application (or its equivalent) in your home state.

The first step in getting a license is to apply for one. This notice explains how to do that, and about the time deadlines for applying.

(Insert in Spanish)

This is an important letter about the restoration of full foster care payments you receive for DCFS children in your home and about the opportunity you have to keep those payments coming by applying for a foster home license within 45 days. If you cannot understand this letter, or if you do not have someone who can explain it to you, please call 1-800-232-3798 for help.

The full foster care payments that the court has ordered will continue if you send in a timely *Certification of License Application* (Form ORC-2), as explained below. However, your payments will be cut again if:

- You do not apply for a foster home license (or its equivalent) in your home state and mail the enclosed *Certification of License Application* (Form ORC-2) by _____ (see the "Application" section, below); or

- Your licensing application is denied (subject to your right to appeal) or withdrawn.

A foster home license or submission of the *Certification of License Application* is not necessary for you to keep the DCFS child(ren) in your home. But your payments will be cut if you do not apply for a license and submit the *Certification of License Application* in a timely manner.

IF YOU ARE ALREADY LICENSED

If you are already licensed (or "approved" or "certified"), please complete the enclosed *Verification of License Determination* (Form ORC-1) and send it and a copy of your license or other equivalent official certification to:

Interstate Compact Office
DCFS, Station 55
406 E. Monroe
Springfield, IL 62701-1498

If you submit the *Verification of License Determination* and a copy of your license, you can skip the rest of this notice, since it does not affect you.

IF YOU HAVE ALREADY APPLIED FOR A LICENSE

If you have already applied for a foster home license (or "approval" or "certification") in your home state, and your application has not been ruled on yet, you do not need to apply again. Simply have your caseworker or licensing worker complete and sign the enclosed *Certification of License Application* (Form ORC-1). Then you must mail the completed form to the Interstate Compact Office at the above address, postmarked by _____. If you meet this deadline, you will continue receiving full foster care payments unless your application is denied by your home state. Please note that your home state may deny your application if you do not cooperate with the rest of the licensing process (see "Cooperating with the Rest of the Licensing Process" section below).

APPLICATION PROCESS

1. **Certification of License Application** To continue receiving full foster care payments, you must fully complete a licensing application or its equivalent in the state where you live--your "home state". The specific licensing requirements are different in each state. However, as a first step, you must complete an application for a foster home license (in your home state) by _____. When you have done this, have your licensing worker (or other caseworker, it you do not have a special licensing worker) complete the

enclosed *Certification of License Application* (Form ORC-2). You must mail this completed form (or send other documentation that you have filed an application for a license or its equivalent in your home state) to the DCFS Interstate Compact Office address listed on page 2 above. The completed form (or other documentation) must be mailed and postmarked by _____.

2. **If You Have Any Questions** If you have any questions regarding the licensing process in your home state, please contact your caseworker in that state. If you are having difficulty in obtaining a license in your state or have any other questions, please contact the DCFS Interstate Compact Office at (217) 785-2680.

3. **Deadline For Submitting Licensing Application Forms** Your completed *Certification of Licensing Application* form must be mailed and postmarked no later than _____, or your payments will be dropped to the lower "standard of need" rate.

COOPERATION WITH THE REST OF THE LICENSING PROCESS

In addition to submitting your licensing application, you must also cooperate with the rest of the licensing process in your home state. This may include training, fingerprinting, a medical examination and a visit by a licensing worker to determine whether your home meets licensing standards.

Failure to cooperate with the licensing worker could lead to your application being denied in your home state and your payments being reduced, but you will have the right to appeal such a decision.

WHAT HAPPENS IF YOU MISS THE DEADLINE

If your *Certification of License Application* is not mailed to DCFS in Springfield and postmarked by _____, your payments will be cut to the "standard of need" rate. The payments will be increased to the higher full foster care payment rate only if you later apply for a license and become licensed.

FINAL LICENSING DECISION

It is your responsibility to inform the DCFS Interstate Compact Office of your home state's final decision granting or denying your license application. For this purpose, a form (*Verification of License Determination*, Form ORC-1) is enclosed. Complete the form and mail it to the DCFS Interstate Compact Office promptly after your home state finally decides your license (or "approval" or "certification") application. The address for the Interstate Compact Office is on page 2 above.

If your home state issues you a foster home license (or "approval" or "certification"), and you mail a copy of it to the Interstate Compact Office, you will continue to receive full foster care payments. If your home state denies your application for a license, you may be able to continue caring for the foster children placed in your home, but your payments will be cut to the "standard of need" rate.

WHERE TO GET MORE INFORMATION OR HELP

If you need more information or help with this application, please contact your caseworker in the state where you live. If you are having difficulty in obtaining a license in your state, or if you have any other questions, please contact the DCFS Interstate Compact Office at (217) 785-2680.

If you have other questions, or if you cannot reach your caseworker or the Interstate Compact Office, you can call the DCFS Ombuds' Office at 1-800-232-3798. For the next 45 days, the Ombuds' Office will be open from 8:30 a.m. to 8:00 p.m., Monday through Friday.

MAKE SURE YOU MEET THE DEADLINES. DON'T WAIT FOR A PHONE CALL TO SEND IN YOUR FORMS.

SAVE THIS NOTICE in case questions about your license application or foster care payments come up later.

Date:_____

IMPORTANT NOTICE ABOUT FOSTER CARE PAYMENT REDUCTION

Dear Relative Caregiver:

Your foster care payments were increased in February. At the time of that increase, you received a letter from DCFS telling you about the increase and explaining the deadlines you had to meet to continue getting the higher payments. You did not meet all of those deadlines, so now your payments are being reduced to the "standard of need" rate that you were getting before February.

The marked boxes indicate which deadlines you missed:

☐ _____ DEADLINE
You did not mail the following material(s) to DCFS, postmarked by _____:

- ☐ completed application forms, including an *"Application for Foster Family Home License"* (Form CFS 597A), an *"Authorization for Background Check"* (Form CFS 497A-1) for yourself and <u>every adult</u> living in your home, and a *"Foster Family Home Information"* sheet (Form CFS 506);
- ☐ Fingerprint receipts for every adult living in your home.

☐ _____ DEADLINE
You did not complete the following step(s) by _____:

- ☐ complete the required six hours of foster parent training;
- ☐ mail the required medical forms to DCFS.

If you still want to get a foster home license, you may now submit a new application. See your licensing worker or caseworker to help you with the application. You may also appeal. See the following page for information about appealing.

APPEALS

If you feel that the boxes marked above are incorrect, and that you really did meet the marked deadlines, you can appeal this decision. If you appeal, your request for an appeal must be sent in writing to the address below and must describe when and how you met the deadline(s) marked above. Include any evidence you have to show that you met the deadline.

Your appeal request must be postmarked within 30 days of the date at the top of this notice. If you mail your request even sooner, and it is postmarked within ten days of the date at the top of this notice, DCFS will not reduce your payments until your appeal is fully processed.

NOTE: If you are appealing and the marked boxes above indicate that you missed the _____ deadline, GO AHEAD AND COMPLETE THE TRAINING AND MAIL THE MEDICAL FORM(S) BY _____. If you are appealing and the marked boxes above indicate that you missed the _____ deadline, you must continue to cooperate with the licensing process.

Send your request for an appeal to:

Bureau of Administrative Hearings
HMR Appeals
406 East Monroe, Station 225
Springfield, IL 62701

Minute Order Form (rev. 12/90)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	John A. Nordberg	Sitting Judge if Other Than Assigned Judge	
Case Number	73 C 635	Date	April 29, 1996
Case Title	Youakim v. McDonald		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "MOTION" box above]

(2) ☐ Brief in support of motion due _____

(3) ☐ Answer brief to motion due _____ Reply to answer brief due _____

(4) ☐ Ruling/Hearing on _____ set for _____ at _____

(5) ☐ Status hearing ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(6) ☐ Pretrial conf ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(7) ☐ Trial ☐ Set for ☐ re-set for _____ at _____

(8) ☐ Bench Trial ☐ Jury Trial ☐ Hearing held and continued to _____ at _____

(9) ☐ This case is dismissed ☐ without ☐ with prejudice and without costs ☐ by agreement ☐ pursuant to ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2) ☐ General Rule 21 ☐ want of prosecution ☐ FRCP 41(a)(1) ☐ FRCP 41(b)

(10) [X] [Other docket entry] Plaintiff to submit final judgment order brief and proposed judgment order by May 6, 1996; defendant to reply May 30, 1996; ruling July 3, 1996 at 2:00 p.m.

(11) ☐ [For further detail see] ☐ order on the reverse of ☐ order attached to the original minute order form.

☐ No notices required, advised in open court.
☐ No notices required.
☐ Notices mailed by judge's staff.
☐ Notified counsel by telephone.
☐ Docketing to mail notices.
☐ Mail AO 450 form.
☐ Copy to judge/magistrate judge.

Number of notices
Date
Docketing deputy initials
Date mailed notice
Mailing deputy initials

Document #

courtroom deputy's initials

Date/time received in central Clerk's Office

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM, et al.,	)	
	)	
Plaintiffs,	)	No. 73 C 635
	)	
v.	)	Judge John A. Nordberg
	)	
JESS MCDONALD, Director, Illinois Department of Children and Family Services,	)	
	)	
	)	
	)	
Defendant.	)	

AFFIDAVIT OF MARY SUE MORSCH

COUNTY OF COOK	)	
	:	ss:
STATE OF ILLINOIS	)	

MARY SUE MORSCH, being duly sworn, deposes and states as follows:

1. I am the Chief of the Office of Litigation Management for the Illinois Department of Children and Family Services, and I am co-chairing the implementation process for the Department's Home of Relative ("HMR") Reform. I submit this affidavit to provide the Court with relevant information regarding the Department's progress in implementing the HMR Reform, as well as to address some of the consequences of providing the relief recently requested

by plaintiffs. I previously submitted testimony to this Court, on June 14, 1995, concerning the Department's HMR Reform efforts.

Licensing of Relatives

2. Since the announcement of the HMR Reform, over 8,500 relatives have applied for a foster home license. This includes applications submitted through February 1996. As of March 12, 1995, almost 3,900 of these applications have resulted in an issued license, over 1,400 have been denied, almost 400 have been withdrawn, and over 2,800 are still pending. Of the 3,900 homes that have been issued a license, 1,600 were previously unapproved homes that experienced a rate reduction between July and December of 1995. This has occurred while the Department continues its efforts to implement the HMR Reform, as well as the notice and payments required by the February 16, 1996 Interim Injunctive Order.

Mary Sue Morsch

SWORN TO BEFORE ME THIS
18th day of March, 1996

Notary Public

"OFFICIAL SEAL"
SANDRA K BLANCH
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12/22/99

DATE: May 3. 1996

TO: Home of Relative Provider Agencies/DCFS Staff
Home of Relative Implementation Workgroup
Interested Associations and Advocates

FROM: Carolyn Cochran Kopel and Mary Sue Morsch

SUBJECT: **WEEKLY UPDATE ON HOME OF RELATIVE REFORM INFORMATION**

YOUAKIM V. MCDONALD: Of the relative caregivers who were sent the initial "lavender" application packets on February 23rd, 727 were in full compliance will the April 8th deadline; 136 submitted incomplete materials; 53 submitted materials but failed to do so on time; and 1,697 did not respond at all. On April 26th, all of those who did not attain full compliance by the April 8th deadline were sent a notice informing them that their payment will be reduced effective April 1, 1996. The reduction will be reflected in the first board run in May.

The caregivers who did comply must meet the May 8th deadline of submitting their medicals and completing the training. Non-compliance will result in their payment being reduced effective May 1, 1996 with the first board run in June.

DEFLECTIONS FROM CARE: CHANGE IN DEFINITION OF NEGLECT/DEPENDENCY: As of May 2nd, 1,435 calls were received by the State Central Registry regarding children currently residing with relatives. Of these, 719 were referred for extended family support services, 70 were referred for investigation, 34 had pending investigations, 83 were open cases and were sent to the follow-up worker, 47 were referred elsewhere/no action and 478 had informational packets sent to their home. Of those who received informational packets, 26 relatives called the hotline a second time requesting additional services.

LICENSING: As of April 29th, 3,559 relative homes who submitted conversion applications have been licensed, 44 have surrendered licenses, 423 have withdrawn their license application and 1,278 have been denied licenses. Agencies and DCFS workers will soon be receiving a list of 1,612 relatives who remain pending and asked to dispose of these applications.

PAYMENTS: Please assist the relative caregiver in completing the "relationship" column on the 1401 for submission to DPA. The HPU has been sending mass 1401's to caregivers with children placed after July 1, 1995 who have not gone to DPA and applied for AFDC. The instructions accompanying the 1401 explain the space marked "Relationship" must be completed before going to the local DPA office. The form is not being completed as instructed and as a result, DPA is rejecting the 1401, asking the caregiver to prove relationship or calling the HPU for the relationship. The HPU does not have this information. Each caseworker receives a copy of the letter informing the relative they need to apply for AFDC. The worker should immediately assist the caregiver with the completion of the 1401 when they receive a copy of the letter.

DATE: March 29, 1996

TO: Home of Relative Provider Agencies/DCFS Staff
Home of Relative Implementation Workshop
Interested Associations and Advocates

FROM: Carolyn Cochran Kopel and Mary Sue Morsch

SUBJECT: **WEEKLY UPDATE ON HOME OF RELATIVE REFORM INFORMATION**

YOUAKIM V. MCDONALD: To date, 190 relatives have submitted licensing materials pursuant to the notice sent to Youakim class members with no prior licensing activity. The deadline for submitting these forms, April 8, 1996, is approaching. If the relative caregivers on your caseload have not submitted these materials, please discuss with them their intentions to do so and assist them in meeting the deadline, as well as explain the consequences of not applying at this time. If they choose to apply, please assist them in meeting the April 8 deadline.

DEFLECTIONS FROM CARE: CHANGE IN DEFINITION OF NEGLECT/DEPENDENCY: As of March 29, 1281 calls were received by the hotline regarding children currently residing with relatives. Of these, 680 were referred for extended family support services, 67 were referred for investigation, 79 were open cases and referred to the worker, 34 had pending child protection investigations, 44 were referred elsewhere/no action and 373 had informational packets sent to their home. Of those receiving informational packets, 20 called the hotline a second time requesting casework services.

Beginning April 1, a new referral form will be used by the State Central Registry. It will include the relative's telephone number and a question about the caregiver's desire to complete tasks on his/her own with only the assistance of the informational packet. These changes are expected to cut down on the number of caregivers who receive an additional packet who would be better served by the program.

TRAINING: Please remind relative caregivers that when they go to training they should bring their DCFS provider identification number with them. This number can be found at the top of the monthly payment statement they receive from DCFS and will help DCFS match trained relatives to the DCFS computer system.

LICENSING: As of March 25, 3406 relatives submitting conversion applications have been issued licenses, 378 have withdrawn their licensing applications, 3 have surrendered their licenses and 1361 have been denied licenses. 1770 conversion applications remain pending; agencies, DCFS licensing staff and relatives are instructed to complete the remaining activities and submit a licensing recommendation.

PAYMENT: Caregivers on AFDC must cooperate with DPA in the child support enforcement interviews and the redetermination process. Non-cooperation could result in the cancellation of their AFDC grant.

DCFS workers must assist the caregivers in seeking social security numbers for the DCFS wards when they are applying for AFDC. The DCFS wards will be canceled from the AFDC grant if a SSN is not verified. Workers should provide any documentation contained in files to relative caregivers to support this process.

HUMAN SERVICE CONSOLIDATION: This afternoon, Governor Edgar filed Executive Order No. 3 which provides for a phase-in consolidation of human services agencies. Highlights of the order are being sent to you early next week.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606-1285
(312) 407-0700

FAX: (312) 407-0411
DIRECT DIAL
(312) 407-

BOSTON
HOUSTON
LOS ANGELES
NEWARK
NEW YORK
SAN FRANCISCO
WASHINGTON, D.C.
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HANOI
HONG KONG
LONDON
MOSCOW
PARIS
PRAGUE
SINGAPORE
SYDNEY
TOKYO
TORONTO

April 30, 1996

By Facsimile and First Class Mail

Diane L. Redleaf, Esq.
Lehrer & Redleaf
205 West Monroe Street
Chicago, Illinois 60606

Re: Youakim v. McDonald, No. 73 C 635
(N.D. Ill.) (Nordberg, J.)

Dear Diane:

Following is the data on payment raises made and application packets sent pursuant to Judge Nordberg's February 16, 1996 Interim Injunctive Order. The Department increased 9,001 children in approximately 4,500 unlicensed relative homes from standard of need payments to the foster care board rate as of January 1, 1996 (with the payments mailed in February, 1996). The Department mailed the licensing application packet under Paragraph 4 of the Interim Injunctive Order to 2,643 relative homes.

Please call with any questions you may have regarding this data.

Very truly yours,

Daniel M. Feeney

DEPARTMENT OF CHILDREN AND FAMILY SERVICES
Division of Child Welfare

RELATIVE
~~FOSTER~~ HOME PLACEMENT AGREEMENT

Date of Placement 1/7/72

The Division of Child Welfare, Department of Children and Family Services, has approved the home of Mr. and Mrs. Marcel Youakim,
address 1720 E. Mannheim Rd., Des Plaines, Ill.
for the care of a foster child: Name Timothy Robertson Born 5/1/65

~~A monthly rate which is inclusive and has three component parts - board and clothing and personal allowance for this child. [illegible] a child specific basis.~~

~~[illegible]~~

The district worker will visit the ~~foster~~ above home in order to:

Know the child and keep informed regarding his adjustment.

Assist the ~~foster~~ family and the child in problems that may arise.

Discuss information regarding the child's family and background in order to assist the ~~foster~~ family in understanding and helping the child.

Plan for meeting the clothing, medical care, and other needs of the child.

Discuss any changes in planning for the child.

The Department has the right and authority to remove the child when it appears that this is in his best interests, and agrees to give at least two weeks notice prior to removal if at all possible. However, in those instances in which the Department receives substantiated evidence that the child is receiving improper care or treatment, the Department will remove the child immediately pending investigation. The ~~foster~~ parents agree to cooperate with the Department and to:

Share with the worker their experiences with the child.

Comply with requirements for regular medical and dental examinations.

Report to the worker any illness of the child and any need for medical care.

Call a physician immediately and notify the district office as soon as possible in case of acute illness or accident.

Discuss any change in plans for the child with the worker.

Plan clothing and other needs with the worker.

Consult the worker regarding any extended trip being planned for the child. When the trip is out-of-state, consent from the district office is necessary.

Cooperate with the worker regarding visits between the child and his family either in the ~~foster~~ home, office, or elsewhere; treat the parents courteously, and refrain from criticizing them in the child's presence.

Plan with the worker before making religious commitments for the child, such as baptism, confirmation, and church membership.

Keep confidential all information regarding the child and his family.

Make no arrangements for boarding other children without approval of the worker.

Report any changes in the ~~foster~~ family's situation, or circumstances, which may affect the welfare of the child or the ~~foster~~ family's ability to continue giving care. Give the worker at least two weeks notice, in any situation, when requesting that the child be removed. More than two weeks is often needed to complete planning for the child.

It is understood by both the worker and the ~~foster~~ parents that the child is not placed for adoption in this ~~foster~~ home, and that the child may be removed by the Department when it appears to be for the child's best interests.

This placement agreement, made in good faith and mutual confidence, is equally binding on the Department and the ~~foster parents~~ ABOVE NAMED RELATIVES.

(District office stamp)

David Youakim 1/7/72
(~~Foster parent~~) M. Youakim (Date)
brother-in-law

(~~Foster parent~~) 1-7-72
(Date)
Sister- Linda Youakim

(Department Representative) 1/7/72 (Date)

EXHIBIT I (two of two pages)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM, et al.,	)	
	)	
Plaintiffs,	)	No. 73 C 635
	)	
v.	)	Judge John A. Nordberg
	)	
JESS MCDONALD, Director, Illinois Department of Children and Family Services,	)	
	)	
Defendant.	)	

DEFENDANT'S RESPONSES TO PLAINTIFFS'
FIRST AND SECOND SETS OF INTERROGATORIES

INTERROGATORY NO. 4(a).

As to the period prior to implementation of the HMR Plan, explain fully the process, and identify any documents that describe or relate to or were utilized in the process, for initiating or filing an application for approval or licensing of a relative foster family home, and for deciding on such application. The explanation should include a description of what specific actions particular DCFS staff were required to or did ordinarily take, including the completion of specified forms, to effect the filing and processing and deciding of such applications, and what actions relative foster parents or caregivers were required to or did ordinarily take.

RESPONSE TO INTERROGATORY NO. 4(a).

Relative Approval Process

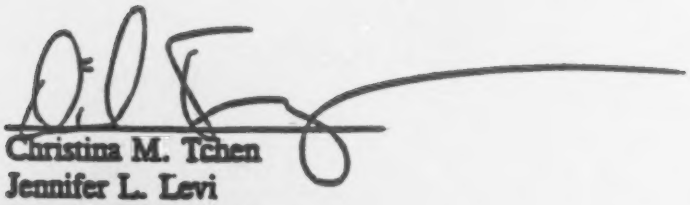
The following is a description of the relative approval process in place prior to the HMR reform. It includes a discussion of cases that were handled by private agencies as well. Note, however, that 67 different private agencies did approval work for DCFS, and each agency has its own internal

procedures for carrying out the work required under their contract with DCFS (program plan explaining responsibilities for full services private agencies [case-work services plus approval status] is attached as Exhibit A [Bates No. Y-000474 - Y-000494]; program plan for agencies providing approval only is attached as Exhibit B [Bates No. Y-000496 - Y-000503]). To the extent this interrogatory requests information regarding the private agencies' specific procedures, defendant objects on the grounds that such request is overboard and overly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence at the hearing. Note also that in practice, procedural variations developed among the DCFS regions as noted below.

Upon placing a child with a relative, or when a child living with a relative entered DCFS custody, the placing worker was required to provide the relative with a copy of the Reid brochure (Bates No. Y-000429 - Y-000435) (copy attached as Exhibit C) and to have the relative sign copies of the Relative Home Placement Agreement (CFS-458) (Bates No. Y-000425 - Y-000426) (copy attached as Exhibit D). In addition, the placing worker began working on the Notice of Relative Home Placement (CFS-454) (Bates No. Y-000427 - Y-000428) (copy attached as Exhibit E), which checked the home against the pre-placement conditions of Rule 335 (Bates No. Y-000504 - Y-000525) (copy attached as Exhibit F). Completion and transmission of the CFS-454 is described in DCFS

Procedure 335, Appendix A (Bates No. Y-005000 - Y-005019) (copy attached as Exhibit G).

Dated: Chicago, Illinois
June 11, 1995



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4/91

State of Illinois
Department of Children and Family Services

RELATIVE CARETAKER PLACEMENT AGREEMENT

Child's Name(s) _____

Child's Case Number(s) _____

This is an agreement between the relative caretaker and the Department of Children and Family Services. The relative's signature at the end of this agreement indicates that the service worker has discussed the conditions below and that the relative understands and shall adhere to each condition during the time the related child remains in the home.

1. The relative will provide a loving, nurturing, and safe home environment. The relative will take the child to all ordinary medical/dental appointments and enroll the child in school when of school age.

2. The relative will participate in a social assessment with the DCFS worker/designee which shall include, but is not limited to:
   - background history of relative
   - inter-personal relationships between natural parents and relatives
   - current functioning of relatives
   - relative's ability to parent
   - relative's ability to provide for child's basic nutritional, social and health needs
   - thorough background check
   - assessment of household composition
   - description of home, including the sleeping arrangements

3. The relative understands that Department approval is required before certain actions may be taken. Without Department knowledge and approval, the relative:
   - shall not return the child to the natural parents
   - shall not allow the natural parents to reside in the relative's home
   - shall not move the child to another home or give the child to another relative or caretaker
   - shall not arrange or consent to medical, psychological, or psychiatric testing or treatment
   - shall not discuss confidential information about the child or natural parents with an unauthorized person
   - shall not take the child out of state

4. The relative understands that the placement of the child may be temporary, that the Department will assess the natural parents' ability to provide support, nurturance, and supervision of their child, and that the Department will make every effort to reunite the family or if that is not possible, to secure a permanent legal family for the child. The Department retains the right to change the child's placement. The relatives have the right to request a reconsideration of the Department's decision to change the child's placement.

5. The relative understands that the Department will work with the parents to establish a service plan for the child and that this plan will be reviewed every six months. Relatives are encouraged to participate in these case reviews every six months or as they are scheduled.

6. The relative understands that the Department may approve and its worker or designee may arrange and/or supervise visits between the natural parents and the child. The DCFS worker will notify the relative of the frequency, dates and location of visits and will notify the relative when visits must be supervised.

7. The relative will advise DCFS worker/designee of any unusual behavior, special needs, or issues which are influencing or affecting the child's behavior and development. DCFS worker/designee will work with the relative to seek a solution to the problemmatic behavior.

8. The relative will advise DCFS worker/designee immediately of any unusual behavior of the parents which could have an adverse effect on the child.

9. The relative agrees to notify the DCFS worker if any one moves in or out of the home, if the relative moves to a different address, or if the relative gets a job or loses a job.

— over —

10. The relative understands that physical punishment may not be used as a disciplinary measure.

11. The relative agrees to cooperate with the licensing process and understands that the home must meet licensing standards or be approved as a relative home in order for the child to remain.

12. The relative understands that a worker will be assigned who will supervise and monitor the child's progress in the home.

13. The relative affirms that one of the following relationships exist between the child and the relative by blood, marriage, or adoption. Please circle one: brother, sister, step-brother, step-sister, grandfather, grandmother, uncle, aunt, nephew, niece, great-grandfather, great-grandmother, great-uncle, great-aunt, first cousin, and spouses of any of the above.

14. The relative understands that he or she has a right to receive Department payments to assist with the care of the child, but that other income for the child may be deducted from the DCFS payment.

15. To contact the Department call: _____

Emergency Number for Evenings/Weekends _____

DCFS Worker	Relative — Woman
Unit	Relative — Man
Telephone	Address
Date	Telephone

NOTICE—Completion of this form is required in order for this agency to carry out its obligations under Illinois Revised Statutes, Ch. 23, Par. 5006a. This form approved by Forms Management Center.

DOCKETED

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1976 DEC 10 PM 4 26

CLERK, U.S. DISTRICT COURT

MARCEL YOUAKIM, et al.,

Plaintiffs,

v. No. 73 C 635

JEROME MILLER, et al.,

Defendants.

NOTICE OF FILING

TO: ROBERT LEHRER
Legal Assistance Foundation
343 South Dearborn Street
Chicago, Illinois

PLEASE TAKE NOTICE that on the 10th day of December, 1976, the attached DEFENDANTS' MEMORANDUM IN OPPOSITION TO FURTHER AMENDMENT OF REGULATION 5.12 was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division at the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois.

WILLIAM J. SCOTT
Attorney General of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

RICHARD L. RYAN
Special Assistant Attorney General
(Of Counsel)
[illegible]

CERTIFICATE OF SERVICE

The undersigned being first duly sworn on oath deposes and says that a copy of the foregoing was served upon the above named at the above address by depositing the same in the United States Mail Chute located at 160 North LaSalle Street, Chicago, Illinois, on December 10, 1976.

SUBSCRIBED and SWORN to before me this 10th day

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 73 C 635
	)	
JEROME MILLER, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN OPPOSITION
TO FURTHER AMENDMENT OF REGULATION 5.12

On November 10, 1976, Defendants filed with this Court for its approval, amended policies and procedures to implement the Court's August 24, 1976 Order. These amended policies and procedures served upon Plaintiff's counsel in written form between 4:00 and 5:00 p.m , on November 9, 1976, were read to said counsel over the telephone in toto in the morning of that date. At that time counsel for Plaintiffs indicated that he thought Regulation 5.12 might be worded differently but stated that "it was no big thing" and Defendants would not be taken to task.

At the Court hearing of November 10, 1976, the "First Amended Interim Report to the Court" which inter alia contained the Amended Regulation 5.12 as read, was approved without comment by counsel for

plaintiffs and by the Court, and an order was entered to that effect.

On November 15, 1976, after the brief for Defendants-Appellants in this matter was filed in the Seventh Circuit Court of Appeals (November 11, 1976), Counsel for Plaintiffs, by phone inquired as to whether Regulation 5.12 might be changed voluntarily. If such was not the case it would have to be "forced" through the court.

Notwithstanding assertions to the contrary, it has never been represented to such counsel by the attorney for Defendants or anyone else, that the intent of such paragraph was to provide that all "foster homes", related and unrelated alike, be subject to identical licensing standards, only to be given a different label. Such a statement would be totally unconsistent with the position Defendants have taken with regard to this litigation from the onset. Indeed, as stated in the oral argument of January 25, 1974, before the three-judge panel considering this case, counsel for Defendants said:

> "In the case of relatives, the State in its wisdom regards "foster care" on the part of relatives to be of a much more personal nature, and in its desire to secure family unity excludes relatives from the requirements of obtaining a license before placement is made with them."

[illegible]

[illegible]

The consistent and unwavering position of the Defendants has been that relative caretakers [illegible]

as inclusive within the state and federal definitions of "foster care", and are consequently not covered within the ambit of 42 U.S.C. §608. This is the sole question presently being litigated on appeal to the Seventh Circuit.

Plaintiffs counsel on the other hand raises an issue concerning the interpretation of §608(f) as it relates to licensing or approval standards. (i.e. whether related and non-related "foster parents" are subject to the same standards). This matter has never been presented to or addressed by any court and is not a proper issue for discussion here, particularly as it is brought subsequent to the filing of an appeal which has finalized the points of consideration on review. As such the question presented should not be litigated within the parameters of this instant suit, and is properly the basis for separate legal consideration in another case.

In addition to and notwithstanding the above, the stated question and the amendment sought by counsel is directly based upon a premise (i.e. inclusion of "relatives" under §608) which is currently being considered by the appellate court, and is not yet finalized. For such reason, Defendants should not be subjected to taking a position and discussing a new issue which calls for additional research until the original premise becomes dispositive.

Lastly, since relative caretakers have never been the subject of licensing standards, the effect of their counsel's insistence on amendment would be to the ultimate detriment of the entire class. The rigid rules of thorough medical examinations, pet inoculation,

separation of bedrooms, mandatory space requirements and a host of other prerequisites to licensing would befall the Plaintiffs where they had not done so before. The direct consequence of failing these standards would be the mandatory removal of the related children from the home to their injury which accomplishes the opposite of the goals required by this Court and the federal government.

WHEREFORE it is respectfully requested that Plaintiffs "suggestions for amendments" be denied.

Respectfully submitted,

WILLIAM J. SCOTT
Attorney General of Illinois
160 North LaSalle Street
Chicago, Illinois 60601

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Special Assistant Attorney General
(Of Counsel)
793-3587